

T H E
Modern Parish Officer ;
OR THE
Parish Officer's Complete Duty.

Brought down to the present Period.

CONTAINING
ALL THE STATUTE - LAWS NOW IN FORCE,
TOGETHER
With the adjudged CASES relating to every Kind of
Parish Business, placed in Alphabetical Order.

A Work essentially necessary for CONSTABLES, CHURCH-
WARDENS, OVERSEERS of the Poor, SURVEYORS of
the Highways, JUSTICES of the Peace, ATTORNIES,
HEADBOROUGHs, TITHINGMEN, SIDESMEN, VES-
TRYMEN, SCAVENGERS, &c. who would wish to exe-
cute their respective Offices with safety and Satisfaction.

It is also a necessary Companion for every Inhabitant of a
Parish, who may not be a Parish Officer ; as it will ena-
ble him to judge whether the Parish Duties are properly
executed by others, and to defend himself against the
Ignorance of those who are unacquainted with their Duty,
as well as the arbitrary Measures of those, who too fre-
quently want to exercise an Authority which they are not
warranted to do by law.

By a GENTLEMAN of LINCOLN'S INN.

D L O N D O N :

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PREFACE
M 1689

ALTHOUGH there are several
treatises extant on the duty of
parish officers, and although some
of them may be allowed a considerable
degree of merit; yet it will still be ac-
knowledgeed that they are not so perfect
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acts of parliament have been made
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years, a work of this kind becomes in a
manner useless, and new performances of
the same nature become absolutely ne-
cessary.

Very little apology is therefore need-
ed for uttering into the world a new
edition of this little treatise. I have
not altered a single word of the former
edition, except in a few places where
the sense was not fully expressed.

P R E F A C E.

ALTHOUGH there are several treatises extant on the duty of parish officers, and although some of them may be allowed a considerable degree of merit; yet it must also be acknowledged that they are not so perfect as they might have been. Besides, new acts of parliament are continually making, and new adjudications in consequence thereof; so that in the course of a few years, a work of this kind becomes in a manner useless, and new performances of the same nature become absolutely necessary.

Very little apology is therefore necessary for ushering into the world a new performance on parish law. How far it is superior to other publications on this subject, is left to the decision of the candid

and impartial public : Let it however be observed, that the utmost care has been taken to render it as generally useful as possible, by avoiding every thing that is now become obsolete, and by supplying all the deficiencies of preceding writers.

It may be necessary to observe that since the publication of any treatise on parish law, two very material acts of parliament have passed ; the one for amending and reducing into one act, all the statutes now in being for the amendment and preservation of the public highways ; and the other for reducing into one act, all the laws now in force for regulating turnpike-roads. Both these acts are given in this work, which, exclusive of any other consideration, must render this performance infinitely superior to any thing of the kind.

If, upon perusal, this attempt should meet with the approbation of the public, and should be reckoned useful to his Majesty's subjects, the editor's end is answered, as his highest ambition is to be serviceable to mankind.

T H E

New Parish Officer.

Affray.

AN affray is a fighting between two ^{Affrays} or more persons, and there must be ^{what.} a stroke given, or a weapon drawn to make an affray.

A constable may command affrayers to depart on pain of imprisonment; and if they ^{Affrayers to} refuse or make resistance, he may justify the ^{depart.} beating them, and call others to his assistance.

Dalt. 35. 4. *Co.* 4.

Affrayers not discontinuing, but still threatening to wound each other, he may put in the ^{Set in the} stocks till he can carry them before a justice; ^{stocks on} and if any assault be made upon the constable, ^{resistance.} he may not only defend himself, but put the party in the stocks, as aforesaid, till he can convey him before a justice, or to the gaol.

Dalt. f. 4, 5, 35, &c. *Kitch.* 69.

Affray.

Persons
making af-
frays may be
imprisoned.

If any sudden affray shall happen through passion, or excess of drink, the constable may put the affrayers in prison, if there be one in the vill, till the heat of their passion or intemperance be over, though he deliver them afterward, or until he can have them before some justice of peace. 2 *Hale's Hist. P. C.* 95.

But though no bare words carry in them so much terror as to amount to an affray, yet in some cases there may be an affray, where there is no actual violence; as where a man arms himself with dangerous and unusual weapons, in such a manner as will naturally create terror to the people; which is said to have been always an offence at the common law, and is strictly prohibited by statute.

For by the stat. 2 *Ed. 3. c. 3.* it is enacted that no man, except the king's servants in his presence, and his ministers in executing their office, and such as be in their company assisting them, *And also* upon a cry made for arms to keep the peace, shall come before the king's justices, or other of the king's ministers during their office, with force and arms, nor bring any force in affray of peace, nor go nor ride armed, by night or day, in fairs or markets, or in the presence of the king's justices, or other ministers, or elsewhere; upon pain to forfeit their armour to the king, and their bodies to prison at the king's pleasure.

But it is holden upon these words, that no wearing of arms is within the meaning of this statute, unless it be accompanied with such circumstances as are apt to terrify the people;

Affray.

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people ; from whence it appears clearly, that persons of quality are in no danger of offending against this statute, by wearing common weapons, or having their usual number of attendants with them, for their ornaments or defence, in such places, and upon such occasions, in which it is the common fashion to make use of them, without causing the least suspicion of an intention to commit an act of violence, or disturbance of the peace. *I Haw. 136.*

And if a constable, or any one aiding and assisting him, shall happen to be killed, it is murder ; and if they are wounded in the affray, they shall have good damages ; but the affrayers in such case shall be without remedy. *Lamb. 141, 142.*

Affrayers no
remedy.

A person who shall assault, threaten to kill, or beat another in the presence of a constable, or do any other act which amounts to a breach of the peace, he has power to carry the offender before a justice of the peace without warrant ; but if the affray or breach of the peace is over before he comes, he must not arrest the affrayers without a justice's warrant, except some person be dangerously hurt. And if there be nothing but words, the constable may not lay hands on them. *Dalt. 36.*

When a
warrant ne-
cessary, and
when not.

It is said, that if a constable shall see persons either actually engaged in an affray, as by striking or offering to strike, or drawing their weapons or the like ; or upon the point of entering upon an affray, as where one shall threaten to kill, wound, or beat an-

Affray.

ther, he may either carry the offender before a justice, to find sureties for the peace, or imprison him of his own authority for a reasonable time, till the heat shall be over, and afterwards detain him till he find such surety by obligation. But it seems, that he ought not to lay hands on those, who barely contend with hot words, without any threats of personal hurt: and that all which he can do in such case, is to command them under pain of imprisonment to avoid fighting. 1

Haw. 137. But if he is so far entrusted with a power over all actual affrays, that though he himself is a sufferer by them and therefore liable to be objected against, as it may be supposed he would be partial in his own cause, yet he may suppress them; and therefore, if an assault be made upon him, he may not only defend himself, but imprison the offender, as if he were no way a party. 1
Haw. 137.

Affrayers
pursued into
another
county.
Breaking
open doors.

Though a constable may pursue affrayers into another county; yet out of the county he is only an assistant to the constable there; and he may justify the breaking open doors, to apprehend affrayers, and keep the peace. *Plowd. 37. Crop. 145. Lamb. 135. 185. &c.*

If an affray be in a house, the constable may break open the doors to preserve the peace; and if affrayers fly to a house, and be follow with fresh suit, he may break open the doors to take them. 1 *Haw. 137.*

But a constable hath no power to arrest a man for an affray done out of his own view, without a warrant from a justice, unless a felony

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felony were done, or like to be done; for it is the business of a constable to preserve the peace, and not to punish the breach of it.

1 *Haw.* 137.

If an affray is made, and the constable refuses to go to keep the peace, being informed of it, he may be fined in the sessions, on presentment by the grand jury. *Crompt.* 846.

Constables neglecting their punishment.

All affrays are punishable by fine and imprisonment. 1 *Haw.* 138.

And all affrays are inquirable in the leet, as common nuisances. 3 *Inst.* 158.

Apprentices.

There are several obsolete statutes concerning who may take apprentices, wherein directions are given about the value of the estate of the parents of such apprentices. They were originally intended for the encouragement of husbandry, on account of the scarcity of labourers in those times, but are now entirely useless and ought to be repealed.

NO one can be bound apprentice without deed. 1 *Salk.* 68.

Binding to be by deed.

And by the stat. 5 *El. c.* 4. it must be by deed indented. *f.* 25.

And indented.

B 3

M. 1

Apprentices.

M. 1 G. 2. *Smith and Birch*. An action was brought against a person, for enticing away and detaining another's apprentice, who had entered into an agreement in writing to serve the plaintiff for seven years. It appeared upon the evidence, that the style of the writing began, *This indenture witnesseth, &c.* but in reality the parchment was not indented, but was a deed poll. On exception taken to the deed, it was urged that the youth was not an apprentice, not being bound by an indenture. An infant cannot be bound by any other way than as the statute, of 5 *El. directs*, which is by indenture, and nothing can make this good. Nor can the deed be now indented, because that would be a forgery. Therefore unless the plaintiff can shew the apprentice to have been of full age at the time of signing the deed, he cannot be deemed his apprentice, and consequently no action can lie for detaining him; neither can the plaintiff, by this deed, prove him to be his servant, for he has declared for an apprentice, and must prove him so to be. The plaintiff was therefore nonsuited. *Self. Ca. v. 1. 222.*

But by the 31 G. 2. c. 11. it is enacted that the apprentice may gain a settlement under such deed or writing, although it shall not be indented.

Of stamp.

By several statutes, the binding (except of parish apprentices) shall be on a 2s. and 6d. stamp; and such indenture shall not be given in evidence in any court till it be stamped, and the duties paid.

Over

Apprentices.

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Over and above the said stamps and duties, the duty of 6*d.* shall be paid for every 20*s.* of every sum of 50*l.* or under; and the duty of 1*s.* for every 20*s.* of every sum above 50*l.* given with any apprentice as an apprentice fee; and proportionably for larger or lesser sums, which is to be paid by the master. 8. *Ann. c. 9.* Of additional stamp.

This shall not, however, extend to any apprentice, put out at the charge of any parish or township, or of any public charity. *f. 40.*

Such indentures, within the bills of mortality, shall be brought to the head office to be stamped with a stamp for that purpose, and the duties shall be paid within one month after date. *f. 36.*

And elsewhere such indentures shall be brought either to the head office within the bills, or to a collector of the stamp duties out of the said limits, within two months after date, and the duties shall be paid, and the indenture stamped, if it be at the said head office; otherwise such collector shall indorse on the indenture, a receipt for the duties in words at length, and subscribe his name thereto. *f. 37.*

If it is within fifty miles of the bills of mortality, the indenture shall be brought within three months after date, and elsewhere within six months after date, to the head office to be stamped. *f. 38.*

Moreover, by the 9. *Ann. c. 21.* If any master shall neglect to pay the duties within the time limited, he shall forfeit 50*l.* one

Apprentices.

half to the king, and the other half, with all costs, to him who shall sue. *f. 66.*

And by 18 G. 2. c. 22. If he shall neglect to pay the duties within the time limited as aforesaid, he shall, besides all other penalties, forfeit double duty. *f. 23. 24.*

But there is an indemnifying clause in almost every session of parliament, for the relief of those who had neglected to pay the said duties.

How differences between masters and apprentices are to be determined.

By the *stat. 20 G. 2. c. 19. sect. 3.* It shall be lawful for two or more justices, upon any complaint by any apprentice put out by the parish, or any apprentice upon whose binding out no more than five pounds were paid, touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill treatment towards such apprentice, by his or her master or mistress, to summon them to appear before such justices at a reasonable time to be mentioned in such summons; and such justices may examine into the matter of such complaint; and upon proof thereof made, upon oath, to their satisfaction, (whether the master or mistress be present or absent, if service of the summons be proved upon oath) such justices may discharge such apprentice, by warrant under their hands and seals; for which warrant no fees shall be paid.

Of misbehaviour of apprentices.

And such justices of the peace, upon complaint made, upon oath, by any master or mistress, against him or her, concerning any misdemeanor, miscarriage, or ill behaviour, in such his or her service (which oath such justices

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justices may administer) may hear, and determine the same, and punish the offender by commitment to the house of correction, and kept to hard labour for a time not exceeding one kalendar month, or otherwise by discharging such apprentice in the manner before mentioned. *Stat. 4. J. 1. c. 11.*

Any person who is aggrieved by such determination, order, or warrant of such justices as aforesaid (save and except any order of commitment) may appeal to the next general quarter-sessions to be held for the county, riding, liberty, city, town corporate, or place where such determination, or order, or warrant shall be made; and such general quarter-sessions is hereby empowered to hear and finally to determine the same, and to award such costs to any of the respective persons appellant or respondent, as the said sessions shall think proper, not exceeding 40 s. to be levied by distress and sale. *f. 5. Stat. 1. c. 11.*

No *certiorari* shall issue to remove any proceedings had in pursuance of this act, into any of his majesty's courts of record at *Westminster*. *f. 6. Stat. 1. c. 11.*

By the stat. 31 G. 2. c. 11. f. 1. it is enacted, that, whereas, by an act made in the third year of *King William and Queen Mary*, intituled, "An act for the better explanation and supplying the defects of the former laws for the settlement of the poor," it is enacted, that if any person shall bind an apprentice by indenture, and inhabit in any town, parish, or place, such binding and inhabitation shall be adjudged a good settlement: and whereas, since the making such act, many persons

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have been unwarily bound apprentices, by deeds, writings, or contracts, not indented, by which binding many have suffered great damage on account of their being refused a settlement in such town or parish where they have been so bound, and resided forty days, and have been removed to the parish where their last legal settlement was before such apprenticeship, where they have had no encouragement to exercise their trades, or opportunity to gain a livelihood by their said trades to which they were so bound apprentices: for relief therefore of such apprentices, and for preventing such mischief for the future, be it enacted, that no person who shall have been bound an apprentice, or who shall hereafter be bound an apprentice, by any deed, writing, or contract, not indented, being first legally stamped, shall be liable to be removed from the town, parish, or place, where he or she shall have been bound an apprentice, and resident forty days, by virtue of any order of removal, granted by two justices of the peace of any county, riding, division, city, town corporate, or place, or by virtue of any order of the justices at their general or quarter-sessions, by reason or on account of such deed, writing, or contract not being indented only.

By the *Stat. 6 Geo. 3. c. 25. Sect. 1.*
Whereas persons frequently take apprentices who are very young, and, for several years are rather a burthen than otherwise to their masters: And whereas it frequently happens that such apprentices, when they might be expected

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expected to be useful to their masters, absent themselves from their service: For remedy whereof, be it enacted, &c. That from and after 24th June 1766, if any apprentice shall absent himself from his master's service before the term of his apprenticeship shall be expired, every such apprentice shall at any time or times thereafter, whenever he shall be found, be compelled to serve his said master for so long a time as he shall have so absented himself from such service, unless he shall make satisfaction to his master for the loss he shall have sustained by his absence from his service; and so, from time to time, as often as any such apprentice shall, without leave of his master, absent himself from his service before the term of his contract shall be fulfilled: And if any such apprentice shall refuse to serve as hereby required, or make such satisfaction to his master, such master may complain, upon oath to any justice of the county or place where he shall reside, which oath such justice is hereby impowered to administer, and to issue a warrant under his hand and seal for apprehending such apprentice; and such justice, upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice; and if he shall not give security to make such satisfaction according to such determination, it shall be lawful for such justice of the peace to commit such apprentice to the house of correction for any time not exceeding three months.

Justices im-
powered to
oblige ap-
prentice to
serve for
such time as
he is absent.

Except apprentices who pay 10 l. fee.

Or where seven years shall have elapsed.

Justices empowered to grant warrants against artificers not fulfilling their contract, or being guilty of any misdemeanor.

Provided always, that nothing in this act shall extend to any apprentice, whose master shall have received with him the sum of ten pounds. *Sec. 2.*

Provided also, that no apprentice shall be compelled to serve for any time or term, or to make any satisfaction to any master, after the expiration of seven years next after the end of the term for which such apprentice shall have contracted to serve; any thing therein contained to the contrary notwithstanding. *Sec. 3.*

Whereas it frequently happens, that artificers, callico printers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers and others who contract with persons for certain terms, leave or depart from their respective services before the terms of their contracts are fulfilled, to the great disappointment, prejudice and loss of the persons with whom they contract: For remedy whereof, be it enacted, that from and after the said 24th June 1766, if any artificer, callico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall contract with any person for any time whatsoever, and shall absent himself from his service before the term of his contract shall be compleated, or be guilty of any other misdemeanor; that then it shall and may be lawful for any justice of any county or place where any such artificer, callico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall be found, and such

such justice of the peace is hereby authorized and impowered, upon complaint thereof made upon oath to him by the person with whom such artificer, or other person, shall have so contracted, or by his or her steward or agent; which oath such justice is hereby impowered to administer; to issue his warrant for the apprehending such artificer, callico printer, handicraftman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, and to examine into the nature of the complaint; and if it shall appear to such justice of the peace that any such artificer, or other person, shall not have fulfilled such contract; or hath been guilty of any misdemeanor, it shall be lawful for such justice of the peace to commit every such person to the house of correction for any time not exceeding three months, nor less than one. *Stat. 4.*

Provided always, that if any person shall be aggrieved by such determination, order, or warrant of any justice as aforesaid, except an order of commitment, such person may appeal to the next general quarter-sessions of the peace to be held for the county or place where such determination or order shall be made; such person giving six days notice of his intention of bringing such appeal, and of the cause and matter thereof, to such justice, and the parties concerned, and entering into a recognizance within three days after such notice, before some justice of the peace for such county or place, with sufficient surety, conditioned to try such appeal at and abide the order or judgment of and pay such

Persons aggrieved by the order of a justice may appeal, giving notice to the justice and entering into a recognizance, &c.

Assault and Battery.

such costs as shall be awarded by the justices of the peace at such quarter-sessions, which said justices, at their said sessions, upon due proof of such notice being given, and of entering into such recognizance as aforesaid, shall and are hereby directed to hear and determine the causes and matters of all such appeals; and shall give such relief and costs to the parties appealing or appealed against as they shall judge proper and reasonable, and their judgments and orders therein shall be final and conclusive. *Stat. 5.*

Limitation
of this act
respecting
the stannaries and the
city of London.

Provided also, that nothing in this act contained shall extend to the stannaries in the counties of Devon and Cornwall, or to lessen the jurisdiction of the chamberlain of the city of London, or of any other court within the said city, touching apprentices.

By the *Stat. 6. Geo. 3. c. 25. Sect. 1, 2, 3.* justices may oblige an apprentice absenting before the expiration of his apprenticeship to serve for such term as he shall be absent, or to make satisfaction; except with regard to apprentices paying 10*l.* fee; or where seven years shall have elapsed.

Assault and Battery.

ASSAULT is derived from the old Latin word *assultus*, that is a leaping on, or from the French verb *assayler*, and signifies an attempt or offer, with force and violence, to do a corporal hurt to another; as by striking at him, with or without a weapon; or presenting a
gun

gun at him, at such a distance to which the gun will carry; or pointing a pitchfork at him, standing within the reach of it; or by holding up one's fist at him; or any other such like act done in a threatening or menacing manner.

Battery (from the French *battre*, to beat or strike, or from the Saxon word *batte*, a club) seems to be when any injury, be it ever so small, is actually done to the person of a man, in an angry or revengeful, or rude, or insolent manner, as by spitting in his face, or in any manner touching him in anger, or violently jostling him out of the way, and the like. *1 Hawk. 134.*

From hence it clearly follows, that a person charged with an assault and battery may be found guilty of the assault, and acquitted of the battery: but every battery includes an assault; therefore on an indictment of assault and battery, in which the assault is ill laid, if the defendant be convicted of the battery, it is sufficient. *Hawk. 134.*

Though there are many ancient opinions to the contrary, it seems now agreed, that no words whatsoever can amount to an assault. *1 Hawk. 134.*

The offender is subject both to an action at the suit of the party wherein he shall render damages; and also to an indictment at the suit of the king, wherein he shall be fined according to the heinousness of the offence.

By the *Stat. 9 Ann. c. 16.* the assaulting a privy counsellor in the execution of his office, is felony without benefit of clergy.

Assaulting a
privy coun-
sellor.

By

Assaulting
to spoil
clothes, &c.

By the *Stat. Geo. 1. c. 23. Sect. 11.* If any person shall wilfully and maliciously assault any person in the public streets or highways, with an intent to tear, spoil, cut, burn or deface the garments or clothes of such person or persons, then all and every person so offending being thereof lawfully convicted, shall be adjudged to be guilty of felony; and the courts before whom such offender shall be tried shall have full power of transporting such felons for the space of seven years.

Assaulting
with intent
to rob.

By the *Stat. 7. Geo. 2. c. 21.* Assaulting with intent to rob, is made felony and transportation.

Any person may justify an assault, in defending his person, or that of his wife, or master, or parent or child within age; and even a wounding may be justified in defence of his person, but not of his possessions. 3 *Salk. 46.*

Also, If an officer who has a lawful warrant lay hands on another to arrest him, or if a parent reasonably chastise his child, a master his servant, a schoolmaster his scholar, a gaoler his prisoner, and, as some say, even a husband his wife, or if one confine a friend who is mad, and bind and beat him properly in his circumstances; or if a man force a sword from one who offers to kill another therewith; in all these and such like cases it is justifiable. 1 *Hawk. 130.*

A person may justify an assault and battery of another who menaces or assaults him, and attempts to beat him from his lawful water-course or highways. *Pult. 42.*

Where

Where a person in his own defence beats another who first assaults him, he may take advantage thereof, either upon an indictment, or upon an action; but with this difference, that on an indictment he may give it in evidence upon the plea of not guilty, but on an action he must plead it specially. *1 Haw.*

134.

And if any person comes into my house, and refuses to go out, I may justify laying hold of him, and turning him out. *Nelf. Assault.*

Bastards.

THE word bastard seems to have been borrowed from the French *batard*, or from the Saxons; and to be compounded of *base*, vile, or ignoble, and *start*, or *stert*, a rise or original. By the common people in the north it is still pronounced *bastart*, denoting a person sprung from a vile or spurious origin; even as an *upstart* in general is a person suddenly risen from a mean extraction.

We term all by the name of bastards, says *Lord Coke*, born out of lawful marriage. By the common law, if the husband be within the four seas, that is, within the jurisdiction of the king of *England*, if the wife hath issue, no proof is to be admitted to prove the child a bastard, unless the husband hath an apparent impossibility of procreation; such issue is bastard, though he be born within marriage. But if the issue be born within a month, or a day, after marriage between parties

Origin of the word bastards.

Bastard born in lawful marriage.

A provision
for keeping
of bastards.

parties of full lawful age, the child is legitimate. 1 *Inft.* 244.

By *Stat. 18. Eliz. c. 3. Sect. 2.* Concerning bastards begotten and born out of lawful marriage (an offence against God's law and man's law) such bastards being now left to be kept at the charge of the parish, where they be born, to the great burden of such parish, and in the defrauding of the relief of the impotent and aged, true poor of the same parish, and to the evil example and encouragement of lewd life: it is enacted that two justices of the peace (whereof one to be of the quorum) in or next unto the limits where the parish church is, within which parish such bastard shall be born, upon examination of the cause and circumstance, shall and may by their discretion take order, as well for the punishment of the mother and reputed father of such bastard child, as for the better relief of every such parish; and shall and may likewise take order for the keeping of every such bastard child, by charging such mother or reputed father with payment of money weekly, or sustentation for the relief of such child, in such wise as they shall think meet and convenient: and if after the same order, by them subscribed under their hands, any of the said persons, viz. mother or reputed father, upon notice thereof, shall not for their part observe and perform the said order, that then every such party so making default in not performing the said order, to be committed to ward to the common gaol, there to remain without bail or mainprise, except they shall

shall put in sufficient security to perform the said order, or else personally to appear at the next general sessions of the peace to be holden in that county, where such order shall be taken; and also to abide such order as the said justices or the greater part of them then and there shall take in that behalf; and that if at the said sessions the said justices shall take no other order, then to abide and perform the order before made as aforesaid.

And by the *Stat. 7 Jac. 1. c. 4. Sect. 7.* the justices of peace shall commit every lewd woman who shall have any bastard which may be chargeable to the parish to the house of correction, there to be punished and set to work during one year. And if she shall offend again, then to remain until she put in sureties for her good behaviour not to offend again.

Any woman who shall be delivered of any issue of her body, which being born alive, should by the laws of this realm be born a bastard, and she endeavour privately, either by drowning or secret burying thereof, or any other ways, either by herself or the procuring of others, so to conceal the death of such child as that it may not come to light, whether it were born alive or not, but be concealed, she shall suffer death as in case of murder, except when she can prove by one witness at the least, that the child was born dead. *21 Jac. 1. c. 27.*

By the *Stat. 13 & 14 Car. 2. c. 12. Sect. 19.* Whereas it often happens that the putative fathers and lewd mothers of bastard children

Concealing the death of a bastard child is murder.

Putative fathers of bastards running away, how to be proceeded against.

dren run away out of the parish, and sometimes out of the county, and leave the said bastard children upon the charge of the parish where they are born, though such putative father and mother have estates sufficient to discharge such parish: be it enacted, that it shall be lawful for the churchwardens and overseers of such parish where any bastard child shall be born, to take and seize so much of the goods and chattels, and to receive so much of annual rents or profits of the lands of such putative father or lewd mother, as shall be ordered by any two justices as aforesaid, towards the discharge of the parish, to be confirmed at the sessions, for bringing up and providing for such bastard child: and thereupon it shall be lawful for the sessions to make an order for the churchwardens or overseers of such parish to dispose of the goods or so much of them for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the sessions, as aforesaid, of his or her lands.

One charged on oath with being the father of a bastard may be apprehended. Any single woman who shall be delivered of a bastard child likely to become chargeable to any parish, or shall declare herself with child, and that such child is likely to be born a bastard, and to be chargeable to any parish, and shall, in examination, to be taken in writing upon oath, before one justice, charge any person with having gotten her with child, it shall be lawful for such justice upon application by the overseers of such parish, or by any sub-

substantial householder of an extraparochial place, to issue his warrant for apprehending him, and bringing him before any of his majesty's justices of such county; and the justice before whom he shall be brought is required to commit him to the common gaol or house of correction, unless he give security to indemnify such parish, or shall enter into a recognizance with sufficient surety, to appear at the next quarter-sessions, and to perform such orders as shall be made in pursuance of the act, 18 *Eliz. c. 3.* If the woman shall die or be married before she be delivered, or shall miscarry of such child, or shall appear not to have been with child, such person shall be discharged from his recognizance, or released out of custody. 6 *G. 2. c. 31. Sect. 1, 2.*

It shall not be lawful for any justice of the peace to send for any woman before she shall be delivered, and one month after, in order to her being examined concerning her pregnancy; or to compel any woman, before she be delivered to answer any questions concerning her pregnancy.

M. 6. G. 2. Lomax and Holmden. In ejectment the question on a trial at bar was, whether the lessor was son and heir of *Caleb Lomax*, Esq; deceased; which depended on the question of his mother's marriage. And that being fully proved, and evidence given of the husband's being frequently at *London*, where the mother lived, so that access must be presumed, the defendants were admitted to give evidence of his inability from a bad habit of body.

body. But their evidence not going to an impossibility, but an improbability only, that was not thought sufficient, and there was a verdict for the plaintiff. *Str.* 940.

Formerly, it is said, if the husband was within the four seas, no proof of non-access to his wife was admitted, but the child was deemed to be his; but as this notion was built on no rational foundation, it is now entirely departed from; and though the husband and wife are both in *England*, if there is sufficient proof that he had no access to her, the child will be a bastard. This was determined in the case of *Pendrell and Pendrell. M. 5 G. 2.* which was an issue out of Chancery, to try whether the plaintiff was the heir at law of one *Thomas Pendrell*. It was agreed, that the plaintiff's father and mother were married, and cohabited for some months; that they parted, she staying in *London*, and he going into *Staffordshire*; that at the end of three years the plaintiff was born. There being some doubt upon the evidence, whether the husband had not been in *London* within the last year, it was sent to be tried. And the plaintiff rested at first upon the presumption of law in favour of legitimacy, which was encountered by strong evidence of no access. And it was agreed by court and counsel, on the trial at *Guildhall*, before Lord Ch. Just. *Raymond*, that the old doctrine of being within the four seas was not to take place, but the jury were at liberty to consider of the point of access, which they did, and found against the plaintiff.

tiff. The court of Chancery acquiesced in this determination. *Str. 925. Andr. 91.*

M. 5 An. St. George's and St. Margaret's Westminster. When a woman is separated from her husband by a divorce, *a mensa et thoro*, the children she has during the separation are bastards; for a due obedience to the sentence shall be intended, unless the contrary be shewed: but if a husband and wife without sentence shall part and live separate, the children shall be legitimate, and so deemed till the contrary be proved, for access shall be intended. But if special verdict find the man had no access, it is a bastard; this was the opinion of Lord Hale, in the case of *Dickins and Collins.* 1 *Salk.* 123.

Child born during a divorce.

The law hath not appointed any exact certain time, for the birth of legitimate issue, by the widow after the death of her husband. 1 *Danu.* 726.

Widow having a child after the husband's death.

M. 7. J. Alsop and Bowtrell. The question was, whether the woman having been delivered of a child forty weeks and nine days after her husband's death such child should be deemed a bastard. And it being proved, that her late husband's father had much abused her, and caused her to lie in the streets; and three physicians made oath, that the child came in time convenient to be the child of the party who died; and that the usual time for a woman to go with child, is nine months and ten days, *to wit*, solar months, thirty days to the month, and not lunar months; and that on account of the want of strength in the woman or the child, or on account of ill usage, she

she might be a longer time, even to the end of ten months or more. They also affirmed, that a perfect birth may be at seven months, according to the strength of the mother or child, which is as long before the time of the proper birth. And for the same reason it may be as long deferred by accident, which is commonly occasioned by infirmities of the body, or passions of the mind. And the child was adjudged to be legitimate. *Cro. Jac. 541.*

M. 11 G. K. and Chandler. Indictment for secreting a woman pregnant with an illegitimate child, so that she could not attend to give evidence concerning the father. The defendant demurred. And judgment was given for the defendant; for the child cannot be illegitimate before it is born, there being always a possibility that she may be married before its birth, and it may be born in lawful wedlock. *Ld. Raym. 1368.*

M. 21. c. 2. Burwell's case. Two justices of the peace order the reputed father to pay so much a week to the parish, till the child should be twelve years old. By the court this was held to be wrong; because the father might take it away when he pleased; and therefore the order ought to have been, that he should pay so long as the child should continue chargeable to the parish. *1 Vent. 48.*

H. 9 G. 2. K. and Jenkins. Motion to quash an order of two justices of the peace, whereby they adjudge that such person is not the putative father, and in consequence discharge

charge him; and the rather, because in such a case the parish cannot appeal, because an appeal is only when the party refuses to give security to come to sessions. And by the whole court, the two justices of the peace have no such authority; for their power depends on the Statute of 18 Eliz. which is only to take order for punishment of the parties, and for relief of the parish, and this order is for neither the one nor the other. *Sess. c. v. 2. 161. Str. 1050.*

K. and Street, M. 1 G. 2. An order of bastardy was made, to pay a weekly sum, till the child was nine years of age, if it should so long live. By the court it is a good order; for we cannot intend it able to provide for itself sooner. *Str. 788.*

And it hath been adjudged, that in order to convict a woman by force of the statute of 21 *Y. c. 27.* there is no need that the indictment be drawn specially, or conclude against the form of the statute; for the statute doth not make a new offence, but such concealment an undeniable evidence of murder. *2 Haw. 438.*

It hath likewise been agreed, that where a woman has endeavoured to conceal the death of such child within the statute, there requires no proof that such child was born alive, or that there were any signs of hurt upon the body, but it shall be concluded that the child was born alive, and murdered by the mother. *2 Haw. 438.* But as this law seemeth to be somewhat severe, it hath of late years been usual, upon trials for this kind of murder,

murder, to require some presumptive evidence that the child was born alive, before the other constrained presumption is admitted, that because the death was concealed, it was therefore killed by its parent. 4 *Blackst. c. 14. page 198.*

It hath also been adjudged, that where a woman lay in a room by her self, and went to bed free from pain, and waking in the night, knocked for help, but could get none, and was delivered of a child, and put it in a trunk, and did not discover the matter till the following night, yet she was not within the statute, because she knocked for help. 2 *Haw. 438.*

If a woman confess herself with child before hand, and afterwards be delivered, and nobody being with her, it is agreed that she is not within the statute, because there was no intent of concealment; in such cases it must therefore appear by signs or marks of hurt upon the body, or some other way, that the child was born alive. 2 *Haw. 438.*

Giving a potion to procure abortion.

If any person gives a woman with child a potion to destroy such child within her, and it operates so strongly as to kill her, this is murder; because it was not given her to cure her of a disease, but to destroy her child within her; and therefore he that gives her a potion for this purpose, must take the consequence, and if it kills the mother, it is murder. 1 *H. H. 429, 30.*

If a pregnant woman take, or another give her any potion to make an abortion, or if a man strike her, whereby the child within her is killed,

killed, though it be highly criminal, it is no murder, nor manslaughter, because it is not yet in *rerum natura*, nor can it be certainly or legally known whether it were killed or not. 1 H. H. 433. But if such child should be born alive, and afterwards die of the poison or bruises it received in the womb, it is murder in such as gave them. 1 Haw. 80. 4 Blackst. c. 14. p. 198.

Middlesex. THE examination of — of — in the said county, single woman, taken on oath before me R. — B. — esquire, one of his majesty's justices of the peace in and for the said county, this — day of — in the year — who saith, That she is now with child, and that the said child is likely to be born a bastard, and to be chargeable to the parish of — in the said county, and that — of — in the said county —, is the father of the child.

A woman's examination before the child's birth on the statute 6 Geo. 2. c. 31.

Taken and signed the day and year above-written before me —.

Middlesex. THE examination of — of A. B. in the said county, single woman, taken upon oath before me C. D. one of his majesty's justices of the peace in and for the said county, this — day of — in the year — who saith, That on — the — day of — now last past, at — in the parish of — in the county aforesaid, she the said — was delivered of a (male or female)

Examination after the birth, on the above statute.

Bastards.

male) bastard child, and that the said bastard child is likely to become chargeable to the parish of—; and that—of—in the said county,—did get her with child of the said bastard child.

*Taken and signed the day and year
above-written before me—*

Bond to in-
demnify the
parish for a
bastard
child.

K NOW all men by these presents, that we—of—in the county of— and—of—are held and firmly bound unto—of—in the said county (in trust for the parishioners of the said parish) in—pounds of good and lawful money of *Great Britain*, to be paid to the said—or their certain attorney, their executors, administrators or assigns. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each and every of our heirs, executors and administrators, firmly by these presents; sealed with our seals, and dated—day of—in the—year of the reign of our severign lord *George the—of Great Britain, France and Ireland* king, defender of the faith, and so forth, in the year of our Lord—. The condition of this obligation is such, that whereas—of—single woman, hath in and by her voluntary examination, taken in writing and upon oath before—one of his majesty's justices of the peace in and for the said county of—declared that she is with child, and that the said child is likely to be born a bastard, and to be chargeable to the said parish—and that the above bounden—is the father of the said child.

If

[If it is after the birth, then say, That whereas—of—single woman in her examination taken in writing upon oath, before me—one of his majesty's justices of the peace in and for the said county hath declared, that on the—day of—now last past, at—in the parish of—in the county aforesaid, she the said—was delivered of a (male or female) bastard child, and that the said bastard child, is likely to become chargeable to the parish —, and hath charged the above-bound—with having got her with child of the said bastard child;] if therefore the said—and—or either of them, their or either of their heirs, executors or administrators, do and shall from time to time, and at all times hereafter, fully and clearly indemnify and save harmless, as well the above named churchwardens and overseers of the poor of the parish of—and their successors for the time being, as also all and singular the other parishioners and inhabitants of the said parish of—which now are, or hereafter shall be for the time being, of and from all manner of costs, taxes, rates, assessments and charges whatsoever, for or by reason of the birth, education, and maintenance of the said child, and of and from all actions, suits, troubles, and other charges and demands whatsoever, touching and concerning the same; that then this present obligation to be void; otherwise to remain in full force. Signed, sealed and delivered (having been first duly stamped) in the presence of—

Condition of
a recogni-
zance for
the father to
appear at
sessions. 6
Geo. 2. c.
31.

THE condition of this recognizance is such, that if the said — do and shall appear at the next general quarter-sessions (or the next general sessions) of the peace to be holden for the said county, and shall then and there abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late majesty queen *Elizabeth*, concerning bastards begotten and born out of lawful matrimony, upon the complaint of the churchwardens and overseers of the parish of — in the said county, for begetting a child on the body of —, single woman; which child is likely to be born a bastard, and to be chargeable to the said parish of —, then this recognizance to be void, or otherwise to remain of force.

Bread.

True ma-
king of
Bread.

BY the 31 G. 2. c. 29. s. 21. it is enacted, the several sorts of bread which shall be made for sale, shall be well made, and in their several degrees, according to the goodness of the several sorts of flour whereof it ought to be made; and no allum, or mixture in which allum shall be a part thereof, or any other ingredient or mixture (except the genuine meal or flour, and common salt, pure water, eggs, milk, yeast and barm, or such leaven as shall be allowed to be put therein by those who have set the assize, and where no assize shall be set, then such leaven as any
ma-

magistrate or justice of the the peace within his jurisdiction shall allow to be used in making of bread) shall be put into, or used in making dough, or any bread to be sold, or as leaven to ferment any dough, or on any other account, in the trade of making bread, on pain that every person (except a servant, or journeyman) who shall knowingly offend, and shall be convicted thereof by confession, or oath of one witness, before any magistrate or justice, shall forfeit not exceeding 10*l.* nor less than 40*s.* or shall by warrant of such magistrate be committed to the house of correction, or some prison of the county, city, town, &c. where the offence shall have been committed, or the offender shall be apprehended, there to be kept to hard labour, not exceeding one month, nor less than ten days from the time of his commitment, as such magistrate shall think fit. If any servant or journeyman baker shall knowingly offend in the premises, and be convicted thereof as aforesaid, he shall forfeit not exceeding 5*l.* nor less than 20*s.* or be committed to the house of correction or prison as aforesaid. And it shall be lawful for the magistrate before whom he shall be convicted, out of the money forfeited, when recovered, to cause the offender's name, his place of abode, and offence, to be published in some publick news-paper, in or near the county, city or place where such offence shall be committed.

It is also enacted, that no person shall knowingly put into any corn, meal, or flour, which shall be manufactured for sale, either

Adulterating meal or flour.

at the time of grinding, dressing or bolting the same, or at any other time, any ingredient or mixture; or shall knowingly sell, or expose to sale, any flour of one sort of grain, for the flour of any other sort of grain, or any thing as or for, or mixed with the flour of any grain, which shall not be the real and genuine flour of the grain the same shall import to be, on pain of forfeiting, not exceeding 5 *l.* nor less than 40 *s.* *f.* 22.

Undue mix-
tures of
meal.

It is further enacted, that no person shall knowingly put into any bread made for sale, any mixture of flour of any other sort of grain than what the same shall import to be, and shall be allowed to be made of, in pursuance of this act; or shall put into any bread made for sale, any larger or other proportion of any other or different sort of grain, or the meal or flour thereof, than what shall be appointed to be put therein by this act; or any mixture in lieu of flour, which shall not really be the genuine flour the same shall import to be, on pain of forfeiting, not exceeding 5 *l.* nor less than 20 *s.* *f.* 23.

Penalty for
deficiency in
weight.

It is further enacted, that if any person shall make bread for sale, or shall expose to sale, any bread which shall be deficient in weight, according to the affize which shall be set, he shall forfeit not more than 5 *s.* nor less than 1 *s.* for every ounce wanting in the weight which every such loaf ought to be of; and for every loaf wanting less than an ounce, shall forfeit not exceeding 2 *s.* 6 *d.* nor less than 6 *d.* as the magistrate before whom such bread shall be brought shall think fit;

so

so as such bread which shall be complained of for wanting weight, in any city, town corporate, borough, liberty or franchise, or within the bills of mortality, shall be brought before some magistrate, having jurisdiction in the premises, and weighed before him, within twenty-four hours after it shall have been baked, sold, or exposed to sale; and so as such bread which shall be complained of, in any hundred, riding, division, liberty, rape, wapentake, or place, shall be brought before some justice of the peace within such jurisdiction, and weighed before him within three days after it shall have been baked, sold, or exposed to sale; unless it shall be made out to the satisfaction of such magistrate that such deficiency in weight arose from some unavoidable accident, or was occasioned by some contrivance, scheme, or confederacy. / 24.

Any person who shall make for sale any sort of bread whatsoever, shall cause to be fairly Mark: marked on every loaf made, sold, or exposed to sale as wheaten bread, a large roman W; and upon every loaf made, sold, or exposed to sale, as household or brown bread, a large roman H; on pain of forfeiting for every loaf not marked as above, any sum not exceeding 20 s. nor less than 5 s. (except such loaves which shall be rasped at or after the purchasing thereof, by the desire of any person who shall order or bespeak the same.) / 25.

No person shall ask or take, for any bread which he shall sell or expose to sale, any greater price than such bread shall be ascertained Penalty of selling for a greater price than set by assize.

tained to be sold at by the assize; and no baker, who shall make any bread for sale, shall refuse to sell any loaf of any of the sorts of bread which in pursuance of this act shall be allowed to be made, to any person or persons who shall tender ready money for the same, at the price set for the same by the assize, when such person shall have any loaf in his possession to be sold, more than shall be requisite for the necessary use of his family, or his customers, and which it shall be incumbent on such baker or other person complained of to prove before the magistrate or justice to whom such complaint shall be made, on pain of forfeiting for every such offence, not exceeding 40 s. nor less than 10 s. *f. 26.*

Bread inferior to wheaten not to be sold for a higher price than household.

No Baker or person shall sell any bread of an inferior quality to wheaten bread, at a higher price than household bread shall be set at by the assize, on pain of forfeiting (on conviction thereof, by confession, or oath of one witness, before one justice) the sum of 20 s. *f. 27.*

Houses to be entered to search for bread.

It shall and may be lawful for any magistrate, or for any peace officer, authorized by warrant of such magistrate, at seasonable times in the day time, to enter into any house, shop, stall, bakehouse, warehouse, &c. belonging to any baker or seller of bread, to search for, view, weigh, and try all or any the bread, which shall be there found; and if any bread shall be found to be wanting, either in the goodness of the stuff, or deficient in the due baking, or working thereof, or wanting

wanting in the due weight, or not truly marked, or shall be of any other sort of bread than shall be allowed to be made by virtue of this act; any such magistrate, or peace-officer may seize the same; and such magistrate may dispose thereof, as he shall think fit. *f. 28.*

By 31 G. 2. c. 29. *f. 29.* On information being given on oath, to any magistrate of there being reasonable cause to suspect, that any miller who grinds any grain for toll or reward, or any person who shall dress, bolt, or otherwise manufacture any flour for sale, or any maker of bread for sale, doth mix up with any meal or flour manufactured for sale, any mixture or ingredient, not the genuine produce of the grain such flour shall import or ought to be, or whereby the purity of any meal or flour in the possession of any such miller, mealman, or baker, shall be adulterated, it shall be lawful for such magistrate, and for any peace officer authorized by the warrant of such magistrate, at seasonable times of the day, to enter into any house, mill, shop, bakehouse, stall, bolting-house, pastry, warehouse or outhouse, belonging to any such miller, mealman or baker, and to search and examine whether any mixture, or ingredient, not the genuine produce of the grain such flour shall import, shall have been mixed with any flour in the possession of any such person, either in the grinding of any grain at the mill, or in the dressing thereof, or whereby the purity of any flour shall be adulterated: and if it shall appear that any

Mills and other places may be entered to search for adulterated meal.

offence hath been committed in any place allowed to be searched, it shall be lawful for any magistrate or officer, authorized as aforesaid, to seize any flour which shall be found to have been adulterated, and all ingredients which shall be found and deemed to have been used or intended to be used for such adulteration; and the same seized by such peace-officer shall forthwith be carried to some magistrate; and if any magistrate, who shall make any seizure in pursuance of this act, or to whom any thing seized shall be brought, shall adjudge that any ingredients, not being the genuine produce of the grain any such flour which shall have been so seized shall import and ought to be, shall have been put into any such flour, or that the purity of any such flour so seized was adulterated by any ingredient put therein, in such case, he is hereby required to dispose of the same as he shall think proper.

Penalty for
having in
possession
unlawful
ingredients.

It is also enacted, by the same statute, § 30. That every miller, mealman, baker, or seller of bread, in whose house, mill, shop, bakehouse, stall, boltinghouse, pastry, ware-house, outhouse, or possession, any ingredient shall be found, which shall be deemed by any magistrate to have been lodged there with intent to have adulterated the purity of flour or bread, shall on conviction by confession, or oath of one witness, before any such magistrate, forfeit not more than 10 l. nor less than 40 s. unless the party charged shall make it appear to the satisfaction of such magistrate that such ingredient was not lodged there with

with intent to have been put into any flour, or to have adulterated the same, but was there for some other lawful purpose. And it shall and may be lawful for such magistrate, out of the forfeiture, to cause the offender's name, place of abode, and offence, to be published in some news-paper published in or near the place where such offence shall be committed.

Any person who shall obstruct such search, or the seizure of bread or ingredients as aforesaid, shall forfeit not more than 5*l*. nor less than 20*s*. *Penalty of obstructing search.*

If any baker shall make complaint to any magistrate, and make appear by the oath of any credible witness, that any offence he hath been charged with shall have been occasioned by the wilful neglect or default of any journeyman or servant employed by him, such magistrate shall issue his warrant to bring such servant before him, or any magistrate where the offender can be found; and on his being brought before such magistrate, he shall examine into the matter of such complaint, and upon proof thereof, upon oath, shall under his hand adjudge what reasonable sum shall be paid by such servant to his master, by way of recompence for what he shall have paid on account of the wilful neglect or default of such servant: and if such journeyman or servant shall neglect or refuse, on conviction, to pay the same immediately, such magistrate shall commit him to the house of correction, or some other prison, there to be kept to hard labour not exceeding one month, *Journeymen offending.*

month, unless payment thereof shall be made before the expiration of the said term of one month. *f. 33.*

Manner of
convicting
offenders,

It is also enacted by the same statute, *f. 34.* That it shall be lawful for the mayor of *London*, or any one of the aldermen thereof, within the said city, or liberties; and for one justice of the peace within the several counties, ridings, divisions, cities, towns corporate, &c. to hear and determine, in a summary way, all offences against this act; in order thereto to summon before him the party accused; and if he shall neglect to appear, or offer some reasonable excuse for his default, then on oath made of the offence committed by one witness, such magistrate shall issue his warrant for apprehending the offender: and on appearance of the offender, or if he shall not appear, on notice being given to, or left for him at his usual place of abode, or if he cannot be apprehended on warrant granted against him as aforesaid, such magistrate shall proceed to inquire of the offence, and to examine any witnesses offered on either side upon oath, and shall convict or acquit the party accused; and if on such conviction, the penalty shall not be paid within twenty-four hours after, such magistrate shall issue his warrant to any peace-officer to make distress; and if the offender shall convey his goods out of the jurisdiction of such magistrate, or a part thereof, so that the penalty cannot be levied, then some magistrate, within whose jurisdiction the offender shall have removed his goods, shall back such warrant, and there-

thereupon the penalty shall be levied by distress; and if the forfeiture shall not be paid within five days, the distress shall be appraised and sold, rendering the overplus, after deducting the forfeiture, costs, and charges; such charges to be ascertained by the magistrate before whom the offender was convicted, or who backed the warrant, if either of them continue alive, and if not, by some other magistrate where the offender was convicted; and for want of such distress, every such magistrate, within whose jurisdiction such offender shall be or reside, shall commit him to the common gaol or house of correction of the division or place where the offender shall be found, for one kalendar month, unless payment shall be sooner made.

By a general clause in the same act, *31 G. 2. c. 29. s. 34.* all penalties and forfeitures shall be paid to the informer. — But by the *32 G. 2. c. 18.* such of the penalties by the said act, as thereby are not particularly disposed of, shall be, one moiety thereof where the offender shall be convicted by confession, or oath of one witness, to him who shall inform and prosecute; and the other moiety, and also all penalties incurred on the weighing, trying or seizure of any bread by any magistrate, shall be applied for the better carrying the said act into execution, as such magistrate shall think proper. *s. 2.*

Provided always, that no person or persons shall be convicted for any of the said offences, unless the prosecution be

com-

Application
of the for-
feitures.

Limitation
of actions,

commenced within three days after the offence committed. *f. 42.*

Saving of
the right of
others.

Provided also, that nothing herein contained shall extend to prejudice any right or custom of the city of *London*, or of the lord of any leet, or clerk of a market, or the dean of *Westminster*, or the high steward of *Westminster* or his deputy, or of either of the universities. *f. 43, 45.*

Proceedings
where the
affize has
not been set.

What hath been said above, as to the price and weight of bread, and the like, proceeds upon the supposition of an affize being set. By the 3 G. 3. c. 11. regulations are made, although no affize is set, and further provisions are enacted, *viz.*

No loaf or loaves, called or deemed affize loaf or loaves in the tables of the affize and price of bread, in the 31 G. 2. and the weight of which varies according to the price of grain, shall be made for or exposed to sale, in any place where loaves called prize loaves in the said tables shall be allowed to be sold at the same time; that is to say, no affize loaves of the price of threepence, and prized loaves called half quartern loaves, nor affize loaves of the price of twelve pence, and prized loaves called half peck loaves, nor affize loaves of the price of eighteen pence, and prized loaves called peck loaves, shall at the same time in any place be made for or exposed to sale, in order that unwary persons may not be imposed on by buying affize loaves for prized loaves, or prized loaves for affize loaves; on pain that every person offending shall

shall forfeit not more than 40 s. nor less than 10 s. *f. 10.*

Every baker or maker of bread for sale shall observe the same proportion as to weight, as where the assize is set; that is to say, every white loaf of the price of 2 d. or under, shall weigh three parts in four of the weight of the wheaten loaf of the like price; and every wheaten assize loaf, of whatever price, shall weigh three parts in four of the weight of every household assize loaf of the like price; and every household assize loaf, shall weigh one third part more than a wheaten assize loaf of the like price; on pain of forfeiting not more than 40 s. *f. 4.*

Every peck, half-peck, quarter of a peck, and half a quarter of a peck loaf, made for sale of the flour of wheat, and called weaten bread, shall be sold in proportion to each other, as to price; and the like, as to loaves of household bread, which shall be sold proportionably to each other, and for one fourth less than wheaten bread of the same denomination; on pain of forfeiting for every loaf, not more than 40 s. nor less than 10 s. *f. 5.*

The weight of every sort of bread made for or exposed to sale shall be in averdupois weight as follows: *viz.* the peck loaf, seventeen pounds six ounces; the half-peck loaf, eight pounds eleven ounces, the quarter of a peck loaf, four pounds five ounces and a half; the half a quarter of a peck loaf, two pounds two ounces and three quarters, on pain of forfeiting for every ounce wanting and deficient not more than 5 s. nor less than

1 s. and for less than an ounce not exceeding 2 s. 6 d. nor less than 6 d. ; so as the same in any city, town corporate, or within the bills of mortality, be brought before a justice of the peace, and weighed before him within twenty-four hours after the same shall have been baked or found in any person's custody for sale, and elsewhere within three days ; unless it be made appear to the satisfaction of such justice of the peace, that the deficiency in weight arose from some unavoidable accident, or was occasioned by some contrivance or confederacy. *f. 6.*

By the same statute 3 G. 3. c. 11. *f. 8.* it is enacted, that every wheaten loaf shall be marked with a large roman W. and every household loaf with a large roman H : and if any person shall sell or expose to sale any such loaf unmarked (except such as shall be rasped by the desire of the purchaser;) he shall forfeit for every such loaf, not more than 40 s. nor less than 10 s. unless it shall appear to the satisfaction of the justice of the peace, to whom complaint shall be made, that the omission arose from some unavoidable accident, or was occasioned by some contrivance or confederacy.

And by the same statute *f. 9.* it is enacted, that bread made of any other grain than wheat, shall be marked with some letter or letters not exceeding two, as the justices of the peace in the general, quarter, or special sessions shall order ; which order shall be entered in a book, to which the bakers may in the day time resort, without fee ; and the justices
of

of the peace shall cause a copy thereof to be put or stuck up in some market town, or other public town or place within the division, or otherwise inserted in some public news-paper usually circulated there; and if the justices of the peace shall neglect to make such order, the baker shall mark every such loaf with any two distinct capital letters he shall think fit. And every person making or having in his custody for sale any such loaf made of other grain than wheat, which shall not be so marked, so as the same may on view thereof be ascertained under what denomination it was made (except the same be rasped by the desire of the purchasers); shall forfeit not more than 40 s. nor less than 5 s. for every loaf not marked.

And it shall and may be lawful for any justice of the peace, or peace-officer authorized by warrant of such justice, to enter into any house, shop, or other place, of any baker or seller of bread, and to search, weigh, and try any bread which shall be there found; and if any bread shall be found to be deficient in weight, not truly marked, or deficient in the true working thereof, or wanting in the goodness of the stuff, or made with any mixture or flour of any other grain than the same shall import to be made with, or with any larger or other proportion of any other grain than what ought to be put therein; or with any ingredient, which by the said act ought not to be put therein, or with any thing in lieu of flour which shall not be the genuine flour the same shall import to be,
or

Churchwardens.

or made with any leaven not allowed by the said former act, such justice of the peace, or peace officer, may seize the same, and dispose thereof to poor persons, as such justice shall think fit; and the maker, whose bread shall be found wanting in goodness, or made with undue mixture, or undue proportion, or made with any thing in lieu of flour, which shall not be the genuine flour the same shall import to be, or with any leaven not allowed by the said act, shall forfeit not more than 5*l.* nor less than 20*s.*; unless it shall appear that the default has arisen from some unavoidable accident, or some contrivance or confederacy.

f. 10.

Any person obstructing or opposing any such search, or seizure, shall forfeit not more than 40*s.* nor less than 20*s.* f. 11.

One justice of the peace may hear and determine offences in the same manner as by the said former act. f. 14, 15.

Persons who are convicted on this act, shall not be prosecuted for the same offence under any other. f. 23.

Churchwardens.

Churchwardens a corporation.

A Churchwarden is a very ancient officer, and by the common law churchwardens are in the nature of a corporation, to take care of the goods of the church.

How elected.

Churchwardens are elected by the minister and parishioners, in *Easter* week, yearly; and if they happen to disagree, the minister is to choose

choose one, and the parishioners another; unless there be a custom to the contrary, which must be complied with. *Can. 89.*

When the custom for choosing churchwardens cannot take, recourse is to be had to the canons. *Stra. 145.*

But if there is no custom to the contrary, the election of churchwardens is in the parson and the parishioners. And the curate represents or stands in the place of the parson for the purpose of nominating one churchwarden. *Stra. 1. 46.*

If the parishioners should neglect to elect churchwardens, the ordinary has no power to appoint them. *Stra. 52.*

The court of king's bench will not grant a mandamus for holding a vestry to churchwardens. *Stra. 686.*

When churchwardens are elected by virtue of any particular custom, the archdeacon is to swear them, though the election be against the canon; and if he refuses, a mandamus lies to compel him. *3 Cro. 551.*

The office of a churchwarden continues till new ones are sworn; and if they refuse to take the oath, as by law directed, being duly elected, they may be excommunicated. Until the churchwardens are sworn, they can do no legal act as churchwardens, nor have they any authority, but whatever they do is of their own wrong. *Can. 89.*

A counsellor or attorney ought not to be chosen churchwarden; and if he is chosen, he may have a prohibition, on account of his attendance on the courts at *Westminster.* *2 Roll's Abr. 272.*

And

Sworn in
their office.

On refusing
to take the
oath.

Apothecaries and surgeons.

And apothecaries, who have duly served seven years, shall be exempted from the office of churchwarden. 6 W. 2. 4. And freemen of the corporation of surgeons in London are exempted from being churchwardens. 18 G. 2. c. 15.

Dissenting ministers.

All dissenting teachers or preachers, in holy orders, or pretended holy orders, being duly qualified, are exempted from the office of churchwarden. 1 W. 8. c. 18.

Persons who are excused from serving. Dissenters how to act.

All teachers of dissenting congregations, registered seamen, though not in actual service, &c. are exempted from serving the office of churchwarden, by divers statutes. If any dissenter be chosen churchwarden, he may execute the office by sufficient deputy. 2 Roll. Abr. 272.

Persons having convicted a felon.

Any person who has prosecuted a felon to conviction, is exempted from the office of churchwarden; in the parish where the offence was committed. 10 & 11 W. c. 23. s. 2.

Serving in the militia.

No private man, serving for himself in the militia, during the time of such service, shall be liable to serve as churchwarden. 2 G. 3. c. 20.

Refusing to take the office.

Any person elected churchwarden, refusing to take his office and oath, may be excommunicated; and no prohibition will lie. Gills. 243.

Churchwardens a body corporate.

Churchwardens being thus sworn, are so far incorporated by law, as to sue for the goods of the church, and to bring an action of trespass for them; and also to purchase goods for the use of the parish; but they are not

not a corporation in such sort as to purchase lands or take by grant, except in London by custom. *Giles. 241.*

Churchwardens are to see that the parishioners come to church every Sunday, and to present the names of such as absent themselves to the ordinary; or levy 1s. for every offence. *Stat. 1. Eliz. cap.*

Churchwardens are not to permit any persons to stand idle, walk or talk in the church or church-yard; they are to take care that no persons sit in the church with their hats on, or in any other irreverent or indecent manner, but that they behave themselves orderly, soberly, and reverently, kneeling at the prayers, and standing at the belief, &c. they are to see that none contend about places, and they may chastise disorderly boys, &c. *Can. 18. and 111.*

They shall not suffer any man to preach within their churches or chapels, without producing their licence; and they are to take care that all persons excommunicated be kept out of the church. *Can. 50. 85. and to see that peace be duly kept in the church.*

Any person quarrelling either in the church or church-yard, the ordinary may suspend him from entering the church, &c. If any one is assaulted and beaten in the church, it is not lawful to return blows in his own defence; for striking another there, the offender shall be excommunicated. *5 & 6. Ed. 6. c. 4. Cro. Jac. 462, 366. Noy. 104.*

The churchwardens are to apprehend those who interrupt or disturb the minister, and bring them to the congregation.

Churchwardens.

bring them before a justice, &c. And any person disturbing the minister, is by *stat. 2 & 3 Ed. 6.* liable to a penalty of 10*l.* and three months imprisonment; and for the second offence he shall forfeit 20*l.* or suffer six months imprisonment; and for the third offence, he shall forfeit all his goods and chattels, and be imprisoned during life. And by *W. & M.* to disturb a congregation, misuse a teacher, &c. incurs a forfeiture of 20*l.*

Search ale-
houses on
Sunday.

They shall see that the Lord's day be duly observed; they shall search alehouses on Sundays; and if any persons are found therein, during divine service, they shall make them pay 3*s.* 4*d.* and also 1*s.* for being absent from church; and the master of such alehouse shall forfeit 10*s.* &c. *stat. 1. Jac. 1. c. 9.*

Profaners of
the Lord's
day.

The churchwardens shall execute warrants against those who profane the Lord's day; and levy the forfeiture of 1*s.* &c. on those who curse or swear, by warrant from a justice, &c.

To keep the
keys of the
belfry.

They are to keep the keys of the belfry, and see that the bells be not rung without good cause, to be allowed of by the minister and themselves. *Can. 88.*

Make pre-
sentment of
things be-
longing to
the church.

Churchwardens are to make presentment upon oath, (usually twice a year) but especially at the visitation of the bishop, of the several articles following, *v.z.* whether there is a box for alms in the church; whether the bells and bell ropes are in repair; whether there be a bible, common prayer book, and book of canons; a desk for the reader, cushion for the pulpit, and a surplice; a communion table,

table, table cloth, cups, and covers for bread, flaggons and font; a carpet, a register book, and chest with three locks; whether the king's arms are set up, grave stones and monuments well kept; the Lord's prayer, creed and commandments in fair letters; whether the church yard is well fenced, church and chancel and parsonage house in repair, &c.

Also whether the minister reads the thirty-nine articles twice a year, and the canons once a year, preaches good doctrine every Sunday, reads the common prayer, celebrates the sacrament, reads the homilies, whether he observes the 30th of *January*, the 29th of *May*, and the 5th of *November*; whether he preaches in his gown, wears a surplice, visits the sick, buries the dead, catechises children, baptizes, marries according to law, and lives a sober and godly life.

Concerning
the parson.

Whether any of the parishioners are adulterers, fornicators, drunkards, swearers, haunters of alehouses, &c. in time of divine service, whether they work on Sundays, or do not repair to church, whether alms-houses or schools are abused, or legacies given to pious uses, if baptism be neglected, of women not coming to be churched, of marrying in prohibited degrees, (of which there is to be a table) of marrying without banns, licence, or at unlawful hours; if sacraments are received three times a year of all above sixteen; if parishioners are placed in seats without contention, &c. and if they refuse to make presentment, the parson may present.

Things con-
cerning the
parishioners.

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By

Persons convicted of solemnizing matrimony to be transported.

By the 26 *Geo. 2. c. 33.* it is enacted, That if any person shall, after the 25th of *March, 1754,* solemnize matrimony in any other place than a church or publick chapel, where banns have been usually published, unless by special licence from the archbishop of *Canterbury*; or shall solemnize matrimony without publication of banns, unless licence of marriage be first obtained from some person having authority to grant such licence; every person wilfully offending, and being convicted thereof, shall be adjudged guilty of felony, and be transported for fourteen years. And all marriages solemnized after the 25th of *March, 1754,* in any other place than a church, publick chapel as aforesaid, or that shall be solemnized without publication of banns, or licence of marriage from a person having authority to grant the same, shall be null and void.

and marriage void.

To provide books for entering marriages and banns.

By the 26 *Geo. 2. c. 3.* the churchwardens and chapelwardens of every parish or chapel-ry shall provide proper books of vellum, or durable paper, wherein all marriages and banns of marriage there published or solemnized, shall be registered, and every page thereof shall be marked at the top, with the figure of the number of every such page, beginning at the second leaf with number one; and every leaf or page so numbered, shall be ruled with lines at proper and equal distances from each other; and all banns and marriages published or celebrated in any church or chapel, or within any such parish or chapel-ry, shall be respectively entered, registered, printed or written

Churchwardens.

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written upon, or as near as conveniently may be to such ruled lines, and shall be signed by the minister or curate, or by some other person in his presence, and by his direction; and such entries shall be made as aforesaid, on or near such lines in successive order; where the paper is not damaged or decayed by accident or length of time, until a new book shall be thought proper or necessary to be provided for the same purposes, and then the directions aforesaid shall be observed in such new book; and all books provided as aforesaid, shall be deemed to belong to every such parish or chapelry respectively, and shall be carefully preserved for publick use.

The churchwardens of the parish, with the consent or approbation of the minister, have the placing of the parishioners in the seats of the body of the church, the appointing pew keepers, &c. reserving to the ordinary, a power to correct the same: and in *London* the churchwardens have this authority in themselves by custom.

If it be a custom in a parish, that the churchwardens there are to repair the old seats, and erect new ones, and appoint who are to sit in them; and they in consequence erect a new seat in the body of the church, and appoint a certain person to sit there; and afterwards the ordinary shall decree that another person shall have the seat: In this case a prohibition lies against him, for the custom hath fixed the power of disposing of the seats in the churchwardens. *Roll. Abr. 221.*

The church and church-yard are by the common law the freehold of the parson; but

Seats, persons placed in.

Churchwardens repair and dispose of seats.

Body of the church.

Churchwardens.

the use of the body of the church, and the repairs thereof, common to all the parishioners.

Repairs give
the title to
family seats.

A person may have a seat in a church, appendant to his house or estate, and prescribe that he and his ancestors, or those whose estate he now hath, usually sat there, and repaired the seat; but he cannot prescribe to a seat in the body of the church generally, without shewing that he, and all those he claims from, have time out of mind repaired it. For the body of the church and the repair of it is common to all the parishioners; and to avoid confusion, the distribution and disposing of seats, and the charges of repairing, belongs to the ordinary. *Heb. 69. 2 Roll. Abr. 288.*

If a person and his ancestors have time out of mind repaired the isle, and sat and buried there, it makes it proper to him and his family; sitting there only, does not; but the ordinary may appoint who shall sit there. *Noy 104. Cro. Jac. 366.*

Erecting
pews, hang-
ing up bells,
&c.

If any person shall erect a pew in a church, or hang up a bell in a steeple, they become thereby church goods (though they are not expressly given to the church) and he shall not afterwards remove them. *Stat. 10 H. 4.*

Who shall
repair.

Of common right, as before observed, the soil and freehold of the church is the parson's; the use of the body of the church, and the repair of it, common to all the parishioners; and the disposing of the seats therein, the right of the ordinary. *Gibf. 221.*

The

The spiritual court hath power to compel ^{Of compell-} the parishioners of a parish to repair the body ^{ling the re-} of the church, and may excommunicate them ^{pairs to be} all till it be repaired; but those who are ^{made.} willing to contribute shall be absolved, till the greater part agree to a tax. *Read. Ch. Service.*

If the churchwarden of a parish erect or add ^{Difference} any thing new, either to the fabrick of the ^{between ad-} church, the utensils, or the church-yard, it ^{ding new,} must be with the consent of the parishioners; ^{and repair-} and if such additions are to be made in the ^{ing the old.} church, the bishop's licence is likewise necessary. But where necessary repairs are wanting, the majority of the parish will bind the less; and if the greater part will not consent, where repairs are absolutely necessary, the churchwardens may repair without their consent, if upon notice given them they refuse to meet, or when met, refuse to make a rate. But if a church fall down, the parishioners are not bound to rebuild it. *Read. Ch. Service. 1 Vent. 367.*

If a church is so greatly out of repair, that ^{Majority} it ought to be pulled down, or so little, that ^{may rebuild} it is necessary to enlarge it, the majority of ^{a church.} the parishioners may make a rate for a new building, or enlarging, as there shall be occasion. *Gibf. 221.*

The rector, as also the lay impropriator, ^{Of repairing} are bound by common right to repair the ^{the chancel.} chancel, and is thereupon intitled to the chief seat therein, unless another person hath it by prescription; yet he hath not the disposal of

the seats therein, but the bishop. *Gibf.* 223, 224.

Church-
yards, gates,
ways, &c.
how re-
paired.

The churchwardens are to keep in repair the gates, stiles and doors leading into the church-yard, and the ways therein; and the church ways must not only be broad enough for the passage of single persons, but also for the carrying of a corpse to be buried, as often as there shall be occasion; and the stiles shall be so made or constructed, that persons of all ages may be able to go over them: but if any person hath a private door to the church, or a way through the church-yard (which can not be made without the consent of the minister, and a faculty from the bishop) they shall be repaired by him who hath the use of them. Inhabitants may prescribe to have a way through a church-yard, they and their ancestors having always had and repaired the same. *2 Roll. Abr.* 265.

Particular
repairs.

The church reparations extend to church-yard walls, the walls of the church and steeple, the floor, the pulpit, and the pews, windows, iron bars and glass; the roof of timber, with laths, nails, &c. the covering of lead, tiles, &c. the doors with locks and keys; stairs, bells, wheels and ropes in the steeple. *Can.* 85.

Church or-
naments.

Parishioners are chargeable for the repairs of the ornaments of the church; and the following are accounted church ornaments, viz. the communion table and coverings, the communion cups, bible and other books appointed to be kept in churches, the surplice, pulpit cloth and cushion.

The

Churchwardens.

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The expence attending all these, as well as ^{Sexton's} wages, washing the communion clothes, candles and money disbursed by the churchwardens, are to be raised by a rate or tax.

Rates are to be made with the consent of the majority of the parishioners, housekeepers, or occupiers of land: therefore public notice of a vestry (a place so called from the vestments of the minister being kept there) ought to be given the Sunday before, either in the church after divine service, or at the church door as the parishioners come out; both of the calling such meeting, and of the time and place of assembling: and it will be fair and candid then also to declare on what business such meeting is to be held, that all persons may have full time to consider what is to be proposed at the said meeting; and for half an hour before it begins, it is usual for one of the church bells to be tolled, to remind the parishioners when they are to meet. 5 Co. 67.

Par. L. 54.

Every parishioner who paid to the church rates; and no other, had at the common law a right to vote. *Par. L. 56.* And those who do not pay church rates, shall have no vote in matters relating to it, except the rector or vicar. *Wood, b. 1. c. 7.*

Every person who has, a vote in the vestry hath an equal right, and neither the minister nor churchwardens, without a special custom, can adjourn the vestry, but only a majority of the whole assembly. *Str. 1047.*

D 4

The

Of laying
the rate.

The churchwardens and parishioners being met at the vestry, they are then to consider what sum it will be necessary to raise to make such repairs as shall then be needful; and after they have agreed what sum of money is proper, they are to make an equal levy or rate. *Degge, 171.*

Majority
bind the pa-
rish,

The majority of them that appear shall bind the parish, or if none shall appear, the churchwardens themselves may make the rate; because they, and not the parishioners, are to be cited and punished in defect of repairs. *Gibbs. 220.*

Entering in a
book.

It is proper and convenient, that every parish act be entered in the parish book of accounts, and every man's hand consenting to it be set thereto, as it will then be a certain rule for the churchwardens to act by. *Par. L. 55.*

Select vestry.

By custom select vestries may be allowed, of a certain number elected yearly, to make rates, and manage the affairs of the parish for that year; and such custom is good. *Read. Ch. Service. Gibbs. 246. Str. 428.*

One rate for
the fabrick.
another for
ornaments.

It is held, that a rate for the reparation of a fabrick of a church is real, charging the land; but a rate for ornaments of a church is personal, upon the goods, and not upon the land. *Gibbs. 220.*

And in *Jeffrey's case, 5 Co. 67.* it was adjudged, that the rates for the repair of the church shall be laid upon every occupier of lands in the parish, although he may live in another parish; and such person may come to the vestries of the parishioners, and vote

in the making a rate; but he shall not be charged towards the ornaments of the church, as for bells, repair of seats, bread and wine, clerk's wages, visitation charges, and the like, by reason of such lands; the personal estates of the inhabitants being chargeable with every thing not relating to the fabrick of the church, or the repairs of the fences of the church-yard, or such other things as concern the freehold: therefore some have been of opinion, that churchwardens should make two rates, one upon lands and houses, which may concern the freehold of the church, and another upon personal estates and stock, to defray other expences; but as this method would create confusion, it is seldom practised. And *Degge* says, he conceives the law to be clear otherwise, and that a foreigner who holds lands in the parish, is as much obliged to pay towards the bells, seats, and ornaments, as to the repair of the church; otherwise there would be very great confusion in making several levies, which he never observed to be practised within his knowledge; but he leaves it a query, among a variety of opinions.

P. 173.

It is agreed that a taxation by the pound rate is the most equitable way, and not according ^{Equal pound} _{rate.} to the quantity of the land. *Wood, b. 1. c. 7.*

Where lands are in farm, the tenant, not the lessor, shall be rated and pay. *Gibbs. 221.*

An impropriator, though bound to repair the chancel, must also contribute to the repairs of the church, if he hath lands in the ^{Impropria-} _{tor, how} chargeable.

D. 5

parish.

parish, which are not part of the parsonage. *Gibf.* 221, 223.

Appeal against the rates.

Any person finding himself aggrieved at the inequality or partiality of the assessment, may appeal to the ecclesiastical judge. *Degge*, 172.

In such case, in order to be relieved, he must shew, that he is unequally taxed, as being rated for more land than he hath, or that his land is over-rated, or that the rate was unnecessary, or that some lands in the parish are omitted in the rate. *Wood, b. 1. c. 7.*

Rate, how recovered.

Any person refusing to pay the rates, being demanded by the churchwardens, they are to be sued for in the ecclesiastical courts, and not elsewhere. *Gibf.* 219. *Degge*, 171.

Quakers refusing to pay church rates, may be sued in the same manner as other parishioners, in the ecclesiastical court; or they may be prosecuted before the justices, in the same manner as for their tithes.

Poor children bound apprentice provided for.

Poor children being appointed to be bound apprentice, pursuant to 43 *Eliz. cap. 2.* the person to whom they are to be bound, shall receive and provide for them according to the indenture, signed and confirmed by two justices, and also execute the other part of the indentures; and upon refusal, oath being thereof made by one of the churchwardens or overseers, before any two justices of the peace for that county, &c. he shall forfeit ten pounds, to be levied by distress and sale, by warrant of the said justices, to be applied to the use of the poor of the parish, saving to the person to whom any poor child shall be appointed

pointed to be bound, his appeal to the next quarter-sessions, whose order shall be final.

By the *stat. 5 Geo. 1. cap. 8. sect. 1.* It shall and may be lawful for the churchwardens, or overseers, where any wife or children shall be left by their husbands, or parents, on the charge of such parish, by warrant from any two justices of the peace, to seize so much of the goods, and receive so much of the annual rents and profits of the lands of such husband or parent, as such justices of the peace shall direct, for the discharges of the parish for the providing for such wife or children; which order being confirmed at the next quarter-sessions, the justices may make an order to dispose of such goods, and to receive the rents and profits, &c. for the purposes aforesaid.

Churchwardens may seize the goods, &c. of husbands and parents, who leave their wives and children upon the parish.

The churchwardens and overseers of the parish shall be accountable to the quarter-sessions for what monies they shall receive by virtue of this act. *sect. 2.*

Churchwardens and overseers, with the consent of the parishioners, or inhabitants in vestry, may purchase or hire houses in, and contract with the persons for the lodging, maintaining and employing such poor in their parishes, &c. as shall desire relief; and if any poor person shall refuse to be lodged in such house, he shall be struck out of the books, and not be intitled to relief; and two or more such parishes, &c. with like consent, with the approbation of a justice of peace, dwelling in or near such parish, &c. may unite in purchasing or hiring such house; and

Churchwardens may purchase houses to employ the poor in.

Churchwardens.

the churchwardens and overseers of any parish, &c. with like consent, may contract with the churchwardens and overseers of any other parish, for the lodging, maintaining, or employing of any poor person, provided that no person, or his apprentice or children, shall require a settlement in the parish to which they are removed by virtue of this act. *sect. 4.*

Poors rates
published in
the church.

By the *stat. 17 Geo. 2. cap. 3. sect. 1.* it is enacted, That whereas great inconveniencies frequently arise in cities, towns corporate, parishes, and places, on account of the unlimited power of the churchwardens and overseers of the poor, who often on frivolous pretences, and to answer private ends, make unjust rates, in a secret and clandestine manner, contrary to the true intent and meaning of 43 *Eliz.* for preventing the like abuses for the future, be it enacted, That after the first day of *May*, 1744, the churchwardens and overseers, &c. shall give, or cause to be given, public notice in the church, of every rate for the relief of the poor, allowed by the justice of peace, the next Sunday after it shall have been so allowed; and no rate shall be esteemed valid and sufficient, unless such notice shall have been given.

The rates to
be inspected,
and copies
taken.

It is further enacted, That the churchwardens and overseers in every parish, township, or place, shall permit all the inhabitants of the said parish, township, or place, to inspect every such rate at all reasonable times, paying 1s. for the same; and shall, upon demand, forthwith give copies of the same, or any part thereof, to any inhabitant of the said parish, town-

township, or place, paying at the rate of sixpence for every twenty-four names. *sect. 2.*

If any churchwarden, overseer of the poor, Penalty on
 &c. shall not permit any parishioner to in- not permit-
 spect the said rates, or shall refuse or neglect ing to in-
 to give copies thereof as aforesaid, such spect, &c.
 churchwarden, overseer, &c. for every such

offence, shall forfeit to the party aggrieved the sum of 20 l. to be sued for by action of debt, bill, plaint, or information, in any of his majesty's courts of record, wherein no es-
 sion, protection, or wager of law, or more than one imparlance shall be allowed. *sect. 3.*

By the *stat. 17 Geo. 2. cap. 38. sect. 1.* it is enacted, That after the 24th day of June, 1744, the churchwardens and overseers of the poor shall yearly, within fourteen days after other overseers shall be nominated and appointed to succeed them, deliver in to such succeeding overseers a just, true and perfect account in writing, fairly entered in a book, or books, to be kept for that purpose, and signed by the said churchwardens and overseers, hereby directed to account as aforesaid, under their hands, of all sums of money by them received, or rated, and assessed, and not received, and also of all goods, chattels, stock and materials that shall be in their hands, or in the hands of any of the poor, in order to be wrought, and of all monies paid by the churchwardens and overseers so accounting, and of all other things concerning their said office; and shall also pay and deliver over all sums of money, goods, chattels, and other things as shall be in their hands, unto such
 suc-

succeeding overseers of the poor; which said account shall be verified by oath, or by the affirmation of persons called quakers, before one or more of his majesty's justices of the peace; such oath or affirmation such justices are hereby authorised and required to administer, and to sign and attest the caption of the same, at the foot of the said account, without fee or reward; and such book or books shall be carefully reserved by the churchwardens and overseers, or one of them, in some public place in every parish, township, or place; and they shall permit any person there assessed, or liable to be assessed, to inspect the same at all reasonable times, paying sixpence for such inspection, and shall upon demand forthwith give copies of the same, or any part thereof, to such person, paying at the rate of sixpence for every three hundred words, and so in proportion for any greater or less number.

Penalty on
parish officers
not accounting.

And in case such churchwardens and overseers of the poor, or any of them, shall refuse or neglect to make and yield up such account verified as aforesaid, within the time herein before limited, or shall refuse and neglect to pay and deliver over such sum or sums of money, goods, chattels, and other things in their hands, as by this act is directed, it shall and may be lawful to and for any two or more justices of the peace, to commit him or them to the common gaol, until he or they shall have given such account, or shall have paid or yielded up such monies, goods, chattels, and other things in their hands.

To

To the churchwardens of the parish of —.

Midd. ss. **W**HEREAS complaint hath been made unto us, by *A.* Warrant to distrain for a church rate.
B. and *C. D.* of, &c. churchwardens of the said parish, that *E. F. G. H.* &c. have refused to pay the sums of money by legal assessment rated on them, for and towards the reparation of the parish church of, &c. aforesaid, viz. the said *E. F.* the sum of, &c. and the said *G. H.* &c. These are therefore in his majesty's name to command you, that you, or any of you, do levy the said several and respective sums of, &c. by distress and sale of the goods of the said *A. B.* and *C. D.* respectively, rendering to them the overplus, if any be, after the said several sums, and the charges of the distress deducted; and in case there be no goods, whereof a sufficient distress may be taken, that then you do certify the same to us, that such further proceedings may be had as to justice appertains. Given, &c.

When the churchwarden's year is expired, he cannot as churchwarden commence a suit, so as to compel payment of rates, for repairs of the church, or the like: but if he commence the suit within his year, he may proceed in it after the year is out; it being *ex necessitate* to prevent people from delays, in order to wear out the year. 2 *Strange*, 852. Churchwardens suing for rate.

A person residing in one parish, and holding lands in another, may be taxed towards the new casting of the bells of the parish where New casting of bells, for taxes.

where his lands are ; for they being necessary to the people, they are more than ornaments.

Chapelry,
repairs of.

Persons of a chapelry, having always christened and buried within themselves, may prescribe to be exempt from repairing the mother church : but if there is a chapel of ease where they hear divine service, and they bury at another church, they must contribute to the repairs of that church, notwithstanding they repair the chapel.

Repairs of
new church-
es.

A new built church cannot be esteemed as a church in law, till after consecration ; which being done, the parishioners are to repair it : but neither the ordinary nor churchwardens have power to give leave to bury there, but the parson only, the freehold of the soil being in him. *1 Cro. Eliz. 367.*

Sacraments
and burial
make a
church.

If any question should arise whether it is a church or chapel belonging to the mother church, on proof being made that sacraments have been administered, and the dead buried there, it is by the law accounted a distinct church.

Right of bu-
rial.

Notwithstanding the freehold of the church and church-yard lie in the parson, yet he cannot hinder a parishioner from having a place in the body of the church, nor from being buried in the church-yard ; but for burying in the church, it is otherwise. *Cro. Jac. 366.*

Fees for
breaking up
ground.

The fee on breaking the soil at burials, belongs to those upon whom the burden is of repairing the pavement ; that is, to the parson for the chancel, and the churchwardens for the body of the church. *3 Keb. Rep. 504. Ventr. 274.*

Churchwardens.

65

A person may be indicted at sessions for digging up the graves of persons buried, and taking their burial dresses, &c. afterwards interring their bodies again. And by *Co. Lit.* 113. it was resolved in this case, that the property of the winding sheets remained in the person who was the owner of them when used; and an offender was found guilty of felony, but had his clergy. *Hains's case.*

Of robbing persons in the grave.

The churchwardens may maintain an action for defacing a tomb or monument in the church. *Godb.* 279. And so may an heir by descent have an action against any person who beats down or defaces coats of arms, &c. of his ancestors in the church or church-yard. *Cro. Jac.* 367.

Churchwardens power in respect to defacing tombs, &c.

But it is otherwise, if any thing belonging to the freehold be broken or cut down, as the walls, windows, doors, or trees in the church-yard, &c. the parson or vicar, and not the churchwardens, shall then have an action. *Stat.* 8 H. 6.

Freehold in the parson.

The soil and seed of the church-yard are the minister's, and the trees growing therein; but he may not cut them down, unless for repairs of the chancel, &c. though he may top them. 35 *Ed.* 1.

In *London*, by special custom, the churchwardens with the minister, make a corporation for lands as well as for goods; and may as such hold, purchase and take lands for the use of the church, and sue and be sued on account thereof. And there is another custom in the city of *London*, for the parishioners to chuse both churchwardens, exclusive of the

By custom in London they may take lands.

Churchwardens.

the minister; who is also there excused from repairing the chancel of the church. *Cræ. Jac. 325. Co. Inst. 3. Roll. Abr. 339.*

To fix fire-
cock, &c.

The churchwardens of every parish, within the bills of mortality, at the charge of their respective parishes, shall fix upon the pipes belonging to the water-works, stop blocks and fire-cocks; and make a mark on the front of any house over against them to find them, where an instrument is to be kept to open the plug when any fire happens. *Stat. 6 Ann. c. 31.*

To keep en-
gines, &c.
in repair.

And there shall be kept in each parish a large engine, and a hand engine, and a leather pipe and socket of the same size as the plug or fire-cock, under the penalty of 10*l.* to be levied by warrant of two justices, by distress and sale of the goods of the churchwardens; half to go to the informer, and the other half to the poor. *Ibid.*

Reward for
bringing en-
gines, &c.

When any fire shall happen, the first person who brings in a parish engine, or any other large engine with a socket, &c. shall be paid as an encouragement 30*s.* the person who brings in the second parish engine, shall be paid 20*s.* the third 10*s.* and the turn-cock, whose water shall first come into the main pipe, shall be paid 10*s.* by the churchwardens, or the same shall be levied by distress, &c. *stat. 7 Ann. c. 17.*

Assess the
monies, &c.

Churchwardens and overseers may make rates and assessments for money for the maintenance and repairs of engines, stop-blocks, &c. as they do for maintenance of the poor, &c.

When

Churchwardens.

67

When the receipts of churchwardens fall short of their disbursements, the succeeding churchwardens ought to pay them the balance, and place it to their account, by the canon. 88.

Money, &c.
to be delivered up.

When the churchwardens pass their accounts of all money received and expended during their office, they must also give an account of the church goods committed to their charge, which shall be then brought forth, called over, examined, and delivered over to the successors, together with keys of the parish chest, &c.

In case any dispute shall arise about the account, it shall be decided before the ordinary; and for disbursement of any sum not exceeding 40s. the churchwardens oath alone is a sufficient proof; but for any sum above 40s. receipts must be produced, &c. No allowance of account can discharge churchwardens of any fraudulent dealings, which they may have been guilty of in their office; but when ever any such are detected, they are accountable. And though all the parish have allowed accounts of the church goods, the ordinary may call them to account before him too, and punish them if he find cause; but in laying out money, they are punishable for fraud only, not indiscretion. 2 Roll. Abr. 120.

Disputes in
accounts
decided.

The ordinary is not to take the account of the churchwardens, but only to give judgment that they do account; and if the churchwardens being cited into the spiritual court to account, plead that they have accounted at the vestry according to law, and the ordinary rejects the plea, and proceeds notwithstanding the plea, the court of king's bench

Power of
the ordinary
to compel
churchwardens to
account.

bench will grant a prohibition. 2 *Str.* 974.
Andr. 11.

Churchwardens power in a vacancy of the benefice.

During the vacancy of a benefice, churchwardens have the care of it, and as soon as there shall be any avoidance, they should apply to the chancellor of the diocese for a sequestration; and having taken out an instrument for it, they are to manage all the profits and expences of the benefice for him that shall succeed: They are to plough and sow his glebes, take in the crop, gather in tithes, thrash out and sell corn, repair houses, fences, &c. but not commit waste upon the living, in cutting timber, &c. They are also to take care, that during the vacancy, the church be duly served by a curate approved by the bishops, and they are to pay him out of the profits of the benefice. 2 *Inst.* 89.

Doing waste, &c. may be changed.

If the churchwardens waste the church goods in their custody, or much damnify the parish, they may on proof thereof be removed at any time, by the authority of the ordinary 13 *Co.* 70.

To join with constables, overseers, &c.

Churchwardens are to join with the overseers and constables in making rates for the relief of poor prisoners, maimed soldiers, &c. and in chusing surveyors of the highways, appointing days to work, &c. and are to join with the overseers of the poor in the execution of their whole office.

An overseer.

Every churchwarden is in fact an overseer of the poor, although every overseer of the poor is not a churchwarden. 43 *El. c.* 2. *f.* 1. And in *M.* 15. *c.* 2. A churchwarden was committed by the two next justices of the peace,

peace, as churchwarden, for refusing to account for money received and disbursed by him; but on an *habeas corpus* he was discharged: for by the warrant of commitment it ought to appear, he was overseer of the poor, for by the statute of 43 *El.* the office of overseer is annexed to his office of churchwarden, and the justices of the peace have no jurisdiction over him as churchwarden, but as overseer. *Dalt.* 186.

- The Churchwardens (or the constable) shall levy the penalties for persons exercising their worldly calling on the Lord's day. 29 *C.* 2. c. 7. Working on the Lord's day.

Churchwardens shall suffer no plays, feasts, banquets, suppers, church ales, drinkings, temporal courts, or leets, lay juries, musters, or any prophane usage, to be kept in the church or church-yard. *Can.* 88. Profanation of the church.

The Churchwardens shall take care that the parishioners resort to church, and continue there orderly, during the time of divine service; and shall present defaulters. *Can.* 90. Attending divine service.

They shall not suffer idle persons to continue in the church-yard, or church porch, during divine service or preaching; but cause them to come in, or to depart. *Can.* 90. Loitering in the church-yard.

Churchwardens shall levy the forfeiture of 1 s. a Sunday, on the goods of persons who do not come to church. 1 *El.* 2. 1 s. a Sunday not coming to church.

The churchwardens, constables or overseers, shall levy the penalty of 3 s. 4 d. for using unlawful pastimes on the Lord's day. 1 *C.* c. 1. Sports on the Lord's day.

The churchwardens, constables, or overseers, shall levy the penalties for attending at unlawful conventicles. 22 *C.* 2. c. 1. Conventicle.

The

Recusants.

The churchwardens shall on pain of the forfeiture of 20 *l.* present at the sessions once a year, the monthly absence from church of all recusants, also the names and ages of their children who are above nine years old, and the names of their servants. And if the party presented shall be convicted, the churchwardens shall be entitled to a reward of 40 *s.* to be levied on the recusants goods, by warrant of the justices in sessions. 3 *7. c.* 4.

To excommunicate persons.
Ornaments of the church.

They shall not suffer excommunicated persons to come to church. *Can.* 85.

It is the duty of churchwardens to take care, to have in the church, a large bible, a book of common prayer, a book of homilies, a font of stone, a decent communion table, with proper coverings, the ten commandments at the east end of the church, and other chosen sentences upon the walls, a reading desk, a pulpit, and chest or box for alms; at the expence of the parish. *Can.* 80. 1, 2, 3, 4.

Register.

The churchwardens are to take care to have a box wherein to keep a register, with three locks and three keys, two keys to be kept by them, and the other by the minister; and every Sunday they are to see that the minister enter therein all christenings, weddings, and burials that have happened the week before; and at the bottom of every page, they shall subscribe their names with that of the minister. And they shall, within a month after *March* 25, yearly, transmit to the bishop a copy thereof for the year before, subscribed by themselves and the minister.

They

They shall, with the advice and direction ^{Communi-} of the minister, and at the expence of the ^{ons} parish, provide bread and wine for the communion.

The churchwardens or overseers, shall levy ^{Incumbent} the penalty of 5*l.* for an incumbent not reading the communion once a month. 13 &

14 C. 2. c. 4.

Churchwardens shall collect money on ^{Charity} briefs, on pain of 20*l.* 4 *Inst* c. 14. ^{briefs.}

On certificate from the minister, they shall ^{Of burying} apply to the magistrates for conviction of of- ^{in woollen} fenders in not burying in woollen. 30 C.

2. c. 3.

Those persons who murder themselves, or ^{Persons de-} die excommunicated, are not permitted chris- ^{nied christi-} tian burial; and the churchwardens must not ^{an burial.} suffer them to be buried in the church or church-yard, without special licence from the bishop. *Degge* 183.

The churchwardens shall receive the pe- ^{Drunken-} nalties for drunkenness and tipling. 4 G. c. ^{ness.}

5. 21 G. c. 7.

The churchwardens or overseers, shall levy ^{Corn.} the penalty for selling corn by a wrong mea- ^{sure.} 22 C. 2. c. 26.

The churchwardens or overseers, shall levy ^{Of weights} the penalties concerning weights and mea- ^{and mea-} sures. 16 C. c. 19. 22 C. 2. c. 8. ^{asures.}

The churchwardens are to provide chests ^{Militia} wherein to lock up the arms, clothes and ac- ^{countrements} coutrements of the militia. 2 G. 3. c. 20.

The churchwardens and the minister, shall ^{Greenwich} sign certificates for the out- ^{hospital} pensioners of ^{Green-} ^{wich} hospital, residing within their parish, re- ^{specting}

Churchwardens.

pecting the identity of their persons, that they may receive their pensions. 3 G. 3. c. 16.

County
rates.

The churchwardens or overseers shall pay to the high constables the general county rate, out of the money collected for the poor. 12 G. 2. c. 29.

Servants fir-
ing houses.

The churchwardens shall receive the penalty for servants carelessly or negligently firing houses. 6 An. c. 31.

Surveyors of
highways.

The churchwardens shall join with the constable and the surveyor of the highways in chusing and returning new surveyors of the highways. 7 G. 3. c. 42.

Briefs to be
indorsed,
&c.

By the statute 4 Ann. c. 14. it is enacted, that when briefs are delivered to the wardens of churches and chapels, &c. they are immediately after receipt, to indorse the time of receiving, with their names thereon, and deliver them to the ministers and curates, who shall also indorse the time of their receipt, and their names in the same manner as the churchwardens.

Briefs read,
and money
collected.

The ministers within two months after receipt of briefs, are immediately before preaching, openly to read such briefs in their respective places of meeting; and the churchwardens shall collect the money that shall be given there, or go to collect from house to house, &c.

Sums to be
indorsed.

The sums of money collected, and place and time, are to be indorsed in words at length, and signed by the minister and churchwardens, and by the teacher and two substantial persons of separate congregations: And the briefs indorsed, and money collected shall be delivered

delivered to the persons undertaking the briefs, under the penalty of 20*l*. And the undertakers not demanding such briefs and money within such six months, are liable to the same penalty.

If all the briefs be not returned, the undertaker for every copy wanting shall forfeit 50 *l*. or give sufficient proof in the court of chancery, of the briefs being lost by inevitable accidents, and of the money collected thereupon. A register is likewise to be kept of all monies collected, inserting the occasion of the briefs, and the time when collected; to which all persons may freely resort.

And briefs returned.

The undertakers of briefs in two months after the receipts, of the money, and notice to sufferers, are to account before a master in chancery, to be appointed before the lord chancellor.

How money to be accounted for.

All farming such charity money is unlawful; and covenants and agreements concerning the same are void: and any person agreeing to purchase the benefit, or advantage of such briefs, shall forfeit 500 *l*. for the use and benefit of the sufferers.

Briefs not to be farmed.

Constables.

THE names of high constables, or constables of lathes, rapes, wapentakes, hundreds, and franchises; and the sundry names also of petty constables, tythingmen, borsholders, boroheads, head boroughs, chief pledges,

Antiquity of constables.

Constables.

pledges, and such other that bear office in towns, parishes, hamlets, tythings, or boroughs are all in effect but two, that is to say, *constables* and *borsolders*. *Lamb. Const.*

How chosen
and appointed.

Constables are doubtless offices of great antiquity; for by the laws of king *Alfred*, the freemen were to dispose themselves into decennuries and hundreds, and every ten freeholders chose an annual officer, whom they called constable, borsholder, tythingman, or headborough, as head of the decennury. These in every hundred where there was a feudal lord, were sworn in, and admitted by the lord or his steward in his leet: but where there was no such feudal lord, the sheriff in his turn had the swearing and placing of them in. Also, if there was no feudal lord of the hundred, an annual officer was chosen, who was to preside over the whole hundred, who was called the high constable; but if the hundred was feudal, as it often anciently was, then such lord of the hundred administered the office himself. 2 *Hawk. P. C.* 61. 4 *Inst.* 267.

There are two sorts of constables, viz. constables of hundreds and franchises, and constables in towns and parishes within those hundreds or franchises: and in comparison of the one with the other, the first are called high constables, and the latter petty constables.

High constables,

Lambert, in his treatise of the Duty of Constables, &c. fol. 5, says, this office of high constable was drawn from that of the high constable of *England*, which was an office of great authority in deeds of arms and matters of

of

of war, both within and without the realm; for the statute of *Winchester*, anno 13. E. 1. St. 2. c. 6. by which these constables of hundreds and franchises were first ordained (tho', according to others, the office of constable is of far greater antiquity. *Freem.* 348. *Salk.* 380. *Cro. Eliz.* 376.) among other things appoints, that for the better keeping the peace, two constables in every hundred and franchise shall be chosen to make view of armour, and they shall present the defaults of armour, and of suits of towns and of highways. From this Mr. *Lambert* concludes, that the constable of a hundred or franchise, or high constable, is an officer appointed to preserve the king's peace within the precinct of his hundred or franchise.

From hence lord *Coke*, and others, are of opinion, that high constables are not more ancient than this statute: but Mr. *Hawkins* (agreeable to *Lambert*, *Dalton*, and other authorities) says, that it seems that both constables of hundreds, which are commonly called high constables, and also constables of tythings, which are at this day commonly called petty constables, or tythingmen, were by the common law, and not first ordained by the statute of *Winchester*; for that the statute doth not say, that there shall be such officers constituted, but clearly seems to suppose that there were such before the making of it. 2 *Haw.* 61.

It hath been advanced, that a custom in a Woman-town, that the inhabitants shall serve the office of constable by turns, according to the si-

tuation of their several houses, is not good ; for that by such a course, it may come to a woman's turn to be a constable, as inhabitant of one of those houses ; yet we find such customs allowed to be good in later books ; and it seems, that the consequence of the reason above-mentioned may well be denied, since a woman in such case may procure another to serve for her. 2 *Haw.* 63.

Physicians.

It also appears that a practising physician, being chosen constable in pursuance of such custom, has no remedy for his discharge ; for there are no precedents of this kind, and his calling is private. 2 *Haw.* 63.

By the statute 13th & 14th *Car.* 2. c. 12. s. 15. it is enacted, That in case any constable, headborough, or tythingman shall die, or go out of the parish, any two justices of the peace may make and swear a new constable, headborough, or tythingman, until the said lord shall hold a court, or until next quarter-sessions, who shall approve of the said officers so made and sworn as aforesaid, or appoint others as they shall think proper : and if any officer shall continue above a year in his office, that then in such case the justices of the peace in their quarter-sessions may discharge such officers, and may put another fit person in his place, until the lord of the manor shall hold a court as aforesaid.

If any person who has been duly elected constable, shall refuse to take upon himself the office, he may, if present, be fined by the court ; and if absent, on having a certain time and place appointed him for the taking of the oath

oath before a justice of the peace, he may after notice of such appointment and presentment, at the next court be amerced. *Cro. Car.* 567.

In either of these cases he may be indicted, either before justices of oyer and terminer, or at the sessions of the peace; but such indictment ought specially to set forth the manner of every such election, appointment, notice and refusal, and before whom the court was holden. *2. Haw. P. C.* 64.

Nor is an indictment for not finding a sufficient person to serve the office of constable, good, unless such indictment shew that the party refused to serve it himself. *1. Keb.* 416. *2. Haw. P. C.* 64.

It appears certain, that if a sworn attorney ^{Attorn'es.} or other officer of the courts at *Westminster*, be chosen constable, he may have a writ of privilege for his discharge, on account of his necessary attendance in those courts: and it hath been held, that such officers shall have this privilege, not only where there is no special custom concerning the election of constables, but also where they are chosen by a particular custom, in respect of their estates, or otherwise; because no such custom shall be intended to be more ancient than the usages of those courts, and therefore shall give way to them. *2. Haw.* 63.

Also it is taken for granted, that practising ^{Barristers,} barristers at law, and the servants of mem- ^{servants to} bers of parliament, have the same privilege; ^{members of} though there appears to have been no resolutions to this purpose. *2. Haw.* 63.

Alderman
of London.

Also if an alderman of *London* has an house at *D.* in the county of *Essex*, and he, as an inhabitant there, is chosen constable, he is not compellable to serve. For as an alderman he is bound to be present in the city of *London*, for the good government thereof. *Gr. Car.* 585.

Captain of
the guards.

But it seems agreed, that a captain of the king's guards, being presented to serve as constable, in pursuance of a custom in respect of his lands in a town, cannot claim this privilege; because notwithstanding he is bound by his office to personal attendance on the king's person, yet such office being of late institution, shall not prevail against an ancient custom. 2 *Haw.* 63.

By the 5 *Hen. 8. cap.* 6. The wardens and fellowship of surgeons infranchised in *London*, and all barber-surgeons admitted and approved according to the statute in that behalf made, not exceeding the number of twelve, shall be discharged constableship, watch, &c.

By *stat.* 32 *Hen. 8. c.* 40. The president of the commonalty and fellowship of physie in *London*, and commons and fallows of the same, shall not be chosen constables in the city of *London*, or suburbs thereof.

By *stat.* 6 *W. & M. c.* 4. All apothecaries who have been brought up and served as apprentices in the said art for seven years, according to the statute of 5 *Eliz.* shall be freed and exempted from the office of constable.

By *stat.* *W. & M. c.* 18. *f.* 11. It is enacted, that every teacher or preacher in holy orders,

ders, or pretended holy orders, in a congregation tolerated by law, shall after the time of his subscription, and taking the oaths, be exempted from the office of constable. And by s. 7 of the same statute, it is provided, that if any person dissenting from the church of *England*, shall be chosen constable, and shall scruple to take upon him the office, in regard of the oaths, or any other matter required to be done in respect of such office, he may execute it by a sufficient deputy by him to be provided, to be allowed by such persons, and in such manner, as such officer should have been allowed.

By 10 & 11 W. c. 23. s. 2, 3. The person who prosecutes a felon to conviction, or the person to whom he shall assign the certificate thereof, shall be discharged from the office of constable.

Prosecutors
of felons.

The office of a constable being wholly ministerial, and no way judicial, it appears that he may appoint a deputy to execute a warrant directed to him, when by reason of sickness, absence, or otherwise, he cannot do it himself; yet it doth not seem to be settled, that a constable can make a deputy, without some special cause. 2 *Haw.* 62.

Whether
constable
may appoint
a deputy.

But the person that appoints such deputy, must be answerable for his deputy, upon any miscarriage; unless the deputy is duly allowed and sworn, for then he is constable. *Wood, b.* 1. c. 7.

Petty constables and tythingmen are elected by the parish, and sworn in their offices at the court leet, and sometimes by justices of the peace

Petty con-
stables how
chosen.

Constables.

in the sessions: in case any constable, &c. dies, or goes out of the parish, any two justices can make and swear a new constable, &c. until the lord of the leet shall hold a court, or until the next quarter sessions; who shall approve of the said officers so made and sworn, or appoint others. *Stat. 13 & 14. Car. c. 12. s. 15. 2 Stra. 798. 1050. Mod. 13. 2 Keb. Rep. 557. Bulst. 174. Moor 845. Lev. Rep. 233.*

The sessions may remove high constables and petty constables, the justices there being the best judges in these cases. *Salk. 150.*

Choosing
high constables,

The usual manner now is, that the high constables of hundreds be chosen either at the sessions, or by the greater number of the justices of the division; and that they be sworn at sessions, or by warrant from the sessions; which course hath been often allowed and commended by the justices of assize. *Dalt. c. 28.*

Petty constables appointed by justices of the peace.

Every petty constable, being a principal peace officer, and it being necessary for the preservation of the peace, that every vill should be furnished with one; the justices of the peace, ever since the institution of their office, have taken upon them as conservators of the peace, not only to swear the petty constables, which have been chosen at a torn or leet, but also to nominate and swear those who have not been chosen at any such court, on the neglect of the sheriffs or lords to hold their courts, or to take care that such officers are appointed. And as this power of justices of the peace has been confirmed by the uninterrupted

rupted usage of many ages, it shall not now be disputed, but shall be presumed to have been grounded on sufficient authority. Some indeed have carried this point so far, as to allow the justices at their sessions, to swear one who was chosen at the leet, and unduly rejected by the steward, who had sworn another in his place. 2 *Haw.* 65.

M. 21. C. 2. The justices of the county of *Northampton*, at their general sessions, chose a constable for *Holmby*; and for his not coming in to take his oath, proceeded against him. Such proceeding being removed by *certiorari* into the *King's Bench*, it was moved on affidavits, that there had not been a constable there for fifty years before, and that he might be discharged; alledging also, that *Holmby* was a privileged place, and that all the inhabitants were the duke of *York's* tenants: but the court held, that they could not discharge him on motion, and said, the matter must be determined by action of false imprisonment, or some other way; and inclined strongly that he could not any way be discharged: for, by the court, tho' originally constables were chosen in leets, yet the constable being an officer whose duty it is to keep the peace, the justices may chuse him in cases of necessity; as in the hamlets about the *Tower*, the justices, by reason of the increase of buildings, where there was formerly but one constable, chose five, and it was ruled they might do so; and they seemed to incline, that though formerly there had been none, yet they might chuse

Where there hath been no constable before.

Constables.

one if they should think it convenient. 1 *Bat. Abr. Const. A.*

When constables are appointed, the steward of the court-leet, or the justices, administer to them the following oath.

Oath of
constables.

You shall well and truly serve our sovereign lord the king, and the lord of this leet, (if appointed in the court-leet) in the office of a constable, in and for the hundred of *A.* or parish of, *&c.* until you be thereof discharged according to the due course of law, or for the year ensuing, and until another shall be sworn in your room: you shall from time to time well and truly do and execute all things belonging to the said office, according to the best of your knowledge. So help you God.

Of the power and duty of constables without warrant from justice of the peace.

Constables being originally instituted for the better preservation of the peace, they may by the common law arrest felons, and all suspicious persons that go abroad in the night, and sleep by day, or resort to bawdy houses, and keep suspicious company. 2 *Haw. P. C.* 61, 62.

And by the ancient common law, the constable was to present at the torn or leet, all those within his precinct who were not admitted into some tything, and who had not sworn to the king's allegiance; and it seems that by the law in use at this day, he ought to present all offences requirable in the torn or leet. *Lamb. Const.* 5, 6. 45 *Ed.* 3. *Dalt. Sheriff.* 388.

Constable,
a conservator of the
peace.

Every high and petty constable are by the common law conservators of the peace. 2 *Haw.* 33. *Cromb.* 6. c. 1.

If

If any man shall make an affray or assault upon another in the presence of the constable, or shall threaten to kill, beat, or hurt another, or shall be in a fury ready to break the peace, the constable may commit him to the stocks, or other safe custody for the present, and afterwards may carry him before a justice, or to gaol, until he shall find surety for the peace, which surety the constable himself may also take by obligation, to be sealed and delivered to the king's use; and if the party will not find surety to the constable, he may imprison the party until he shall do it. *Dalt. c.*

May commit for an affray in his presence.

1. He cannot however require surety of the peace, unless the offence be in his own view, and not if committed out of his sight; for he cannot take any man's oath that he is afraid of death, because he is not a judge of record; which is the reason that an obligation taken by him shall be in his own name, and not in the king's name; and the same shall be certified at the sessions of the peace. *Gro. Eliz. 375, 376.*

But not when he is absent.

If there is an affray in a house, the constable may break open the doors to preserve the peace; and if affrayers fly to a house, and he immediately follow, he may break open the doors to take them. *Dalt. cap. 8. 67.*

But he cannot of his own authority, as is before intimated, compel a man to find sureties who is delivered into his hands, as having broken the peace in his absence, but ought to carry him before a justice of the peace; neither can he arrest a man for an affray out of

his view, without a warrant from a justice of peace, unless a felony were done, or likely to be done. *Lamb. 133. Cro. Eliz. 375. Owen, 105.*

Antient
oath. *Barl.*
141. *Dalt.*
Just. Edit.
1643.

Formerly constables were sworn to several articles, *viz.* To suppress and present affrays; arrest armed men; present bloodshed and drunkenness; apprehend felons; present gaming-houses and gamesters; make hue and cry; punish idle persons, night-walkers, &c. present rescues; apprehend rioters; punish vagabonds; execute warrants; keep watch, &c.

The duty of
high constables
alone.

The high constable has the direction of the petty constables, headboroughs, and tithingmen within the hundred.

To keep the
peace, and
oversee other
parish officers.

His duty in general is to keep the peace, and apprehend felons, rioters, &c. to make hue and cry after felons; and take care that the watch be duly kept in the hundred, and that the statutes for punishing rogues and vagabonds be put in execution. He ought to present unlawful gaming, tipling and drunkenness, bloodshed, affrays, &c. To return all victuallers and alehouse-keepers that are unlicensed, and such persons as entertain inmates; he shall present bakers who sell bread under weight; brewers selling beer to unlicensed alehouses; forestallers, ingrossers, &c. *Dalt. c. 28.*

Make pre-
sentments,
execute war-
rants, and
make re-
turns, &c.

He is also to present the defaults of petty constables, headboroughs, &c. who neglect to apprehend rogues, vagabonds, and idle persons, whores, night-walkers, &c. and also all defaults in repairing highways and bridges, and

and the names of those who ought to repair them; scavengers who neglect their duty, and all common nuisances: and he is to execute warrants directed to him by justices of peace; and make returns to the sessions of the justices, to all the articles concerning his office. *Lamb. 125.*

The high constable hath power to determine complaints of clothiers and spinners, and other labourers, by virtue of an old statute relating to not paying wages in ready money, &c. which incurs a forfeiture of three times the value of the wages; and on non-payment of the forfeitures, &c. may commit the party till paid. *Stat. 4 Ed. c. 1.* In respect of clothiers.

A high constable has power to enter into any place to search for ropes, &c. for stretching of cloth, and if he finds any, he is to deface them; and if the owners shall afterwards make use of them, such high constable may seize and sell them, and distribute the money to the poor. *Stat. 39 Eliz. c. 20.* Persons resisting the constable forfeit 10*l.*

On warrants from the justices, the high constables are to summon the petty constables to meet and prepare lists of persons qualified on juries. *Stat. 4 W. & M. c. 24.* Jurors.

And on receiving such lists from the petty constables, they are to deliver them over to the quarter-sessions. *Stat. 3 G. 2. c. 25. § 3.*

A high constable neglecting to summons the petty constables, forfeits 10*l.* *Stat. 3 & 4 Ann. c. 18. § 5.*

The manner of election, and the oath and office of constables in the city of London, be- Constables in London,
ing

ing different with respect to other constables appointed in the country, the following observations may be necessary.

Number of
constables.

The city of *London* is divided into 26 wards, and every ward into a number of precincts proportioned to the size of the ward; over each of which precinct is a proper constable.

Manner of
election.

These constables ought all to be freemen of the city: they are nominated by the inhabitants of the precinct on *St. Thomas's day*, and confirmed or disallowed at the ward-mote; and after they are confirmed, they are sworn in their offices at a court of aldermen, on the next *Monday after Twelfth-day*. *Calibr. Rep. p. 129.*

Particulars
of their
oath.

To keep the king's peace to the utmost of their power; to arrest affrayars, rioters, and such as make contests to the breach of the peace, and to lead them to the house of correction, or compters of one of the sheriffs; and in case of resistance to make outcry upon them; and pursue them from street to street, and from ward to ward, till they are arrested.

Nuisances,
defaults in
ordinances,
and death of
freemen,
present-
ments.

They are to search for common nuisances in their respective wards (being required by scavengers, &c.) and upon request to assist the beadle and rakers in collecting their salaries and quarterage; to present to the mayor and ministers of the city, defaults relating to the ordinances of the city; to certify in the mayor's court, once a month, the names and surnames of all freemen deceased; and also of the children of such freemen, being orphans.

And

And by the articles of the wardmote in-quest, constables are to certify the name, surname, place of dwelling, profession and trade of every person who shall newly come to inhabit in their precincts, and to keep a roll thereof: in order to this, they are to make enquiry, at least once a month, into what persons are lately come to lodge and sojourn there.

Farther articles.

And if they find by their own confessions, or the records of the alderman's books, that such new comers are ejected from any other ward for bad living, or any misdemeanor, and refuse to find sureties for their good behaviour, warning is to be given them and their landlords, that they depart; and on refusal, they may be imprisoned, and their landlords fined a year's rent, agreed for by such new comer. *Calth. Rep. 138.*

New comers into parishes, &c.

The constables in each ward are to attend the watch by turns, one every night, and to go the rounds; and with the beadles every night are to warn such persons as are to serve upon the watch in their several precincts; and if they refuse to appear, the constable may hire others in their stead, and they shall pay the constable, according to the custom of the city. The common council appoint the Watchmen.

Watch in London.

They are to certify to the lord mayor and common council of the city, the names of all such persons as shall interrupt or hinder them in the discharge of their offices.

Of obstructing constables.

These are the ancient articles of the oath, and extraordinary business of the constables

Extent of their power.

of

of London; to which I am to add, that in the city of London by the custom, a constable is not only a constable within the precinct for which he is chosen, but over all the ward, and over all the city of London. *Pen Wyld. Trin. 30 Car. 2. Argon.*

Nightly constables, and watch, how appointed by 10 Geo. 2. c. 22.

By the 10 G. 2. c. 22. The court of common council are to meet the first of *October* yearly, and order a proper number of nightly constables, beables and watchmen, for the city of London and liberties; and the aldermen and common council men of wards, are to make an assessment on the inhabitants, to bear the charge thereof.

Time of watching and other business,

The constable shall keep watch and ward, from the tenth of *September* to the tenth of *March*, from nine o'clock in the evening till seven the next morning; and from the tenth of *March* to the tenth of *September*, from ten in the evening till five next morning; and shall use their best endeavours for preventing fires, robberies, and disorders, and arrest malefactors.

How often to go their rounds.

They shall go twice or oftener about their wards, in every night; and watchmen are to apprehend all suspected persons, &c. and deliver them to the constable of the night, who shall carry them before a justice of the peace.

Misbehaving, forfeiture.

Any constable misbehaving himself shall forfeit 20 s. And the lord mayor, or two justices of the city, may hear and determine offences, and levy penalties by distress of goods, &c. *Stat. 10 G. 2. c. 22.*

Such

Constables.

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Such as are chosen into the office, of constable, are obliged to place the king's arms, and the arms of the city, and their names over their doors; and if they reside in alleys, at the end of such alleys, towards the street, to signify that a constable lives there, and that they may be the more easily found when wanted.

Arms of the city, &c. at their door.

Any constable who shall see a person expose an infant in the street, who refuses to take it away, he may apprehend and detain such person till he or she consent to take care of it.

As the constable is the proper officer to a justice of the peace, he is bound to execute his warrants; and therefore it hath been resolved, that where a statute authorizes a justice of the peace to convict a man of a crime, and to levy the penalty by warrant of distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper person to serve such warrant, and indictable for disobeying it. 2 *Haw.* 262.

Subordinate to the justice.

When a warrant is directed generally to all constables, no one can execute it out of his own precinct; but if it be directed to a particular constable by name, he may execute it any where within the jurisdiction of the justice. 1 *Salk.* 176. *Carth.* 308.

A constable, in executing a warrant need not shew it to the party, although he demand a sight of it; but in making an arrest, he ought to acquaint him with the substance of it. 6. *Co.* 54. 9 *Co.* 69.

An

An unlawful arrest without a justice's warrant, cannot be made good by a warrant taken out afterwards. *Dyer*, 244.

Double costs,

When an action is brought against a constable, for any thing done by virtue of his office; he, and all those which in his aid, or by his command, shall do any thing concerning his office, may plead the general issue, and give the special matter in evidence, and if he recovers, he shall have double costs.

7 *I. t. 5.*

No action if he delivers a copy of the warrant,

The constable formerly was bound to take notice of the jurisdiction of the justice; and if the justice issued a warrant in any matter wherein he had no jurisdiction, the constable was punishable for the execution of it: but by the 24 *G. 2. c. 44.* it is enacted; That no action shall be brought against any constable, or other person acting by his order, for any thing done in obedience to the warrant of a justice of the peace, untill demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demands: and if after compliance therewith, any such action shall be brought, without making the justice who signed such warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and constable, on
proof

proof of such warrant, the jury shall find for the constable; notwithstanding such defect of jurisdiction as aforesaid; and if the verdict be given against the justice, the plaintiff shall recover his costs against the justice, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant, for whom such verdict shall be found as aforesaid. *f. 6.*

And no action shall be commenced against any constable, unless within six months after the act committed. *24 G. 2. c. 44. f. 8.*

No action but within six months.

If a constable is assaulted in the execution of his office, he need not go back to the wall, as private persons ought to do; and if in the striving together, the constable kills the other it is no felony; but if the constable is killed, it shall be deemed premeditated murder. *Hale's pl. 37. 1 H. H. 457.*

Constable assaulted need not go back to the wall.

By the *stat. 27 Geo. 2. cap. 20. sect. 2.* A constable exceeding a justices warrant for levying a penalty, or other sum of money directed by an act of parliament, by distress, may deduct his reasonable charges of taking, keeping, and selling the goods distrained; returning the overplus on demand, after such penalty or sum of money and charges deducted.

Constable may deduct for making distress.

By the *stat. 3 Jac. 1. C. 10. sect. 1.* It is enacted, That every person who shall be committed to the common or usual gaol, within any county or liberty, by any justice, for any offence or misdemeanor, such person so to be committed, having ability thereunto, shall bear his own reasonable charges for so conveying

Charges of sending an offender to gaol.

Constables.

veying him to the said gaol, and the charge also of such as shall be appointed to guard him thither: and if any such person shall refuse at the time of his commitment to the said gaol, to defray the said charges, or shall not then pay the same; then such justice shall, by writing under his hand and seal, give warrant to the constable of the hundred, or constable of the township where such person shall inhabit, or from whence he shall be committed, or where he shall have any goods within the county or liberty, to sell such, and so much of the goods and chattels of the said person so to be committed, as by the discretion of the said justice shall satisfy and pay the charges of such his conveying and sending to the said gaol; the appraisement to be made by four of the honest inhabitants of the parish where such goods shall be; and the overplus delivered to the party.

By the *stat. 27 Geo. 2. c. 3. sect. 1.* It is enacted, That when any person not having goods or money in the county where he is taken, sufficient to bear the charges of himself and those who convey him, is committed to gaol, or the house of correction, by warrant from a justice, then, on application by the constable or other officer, who conveyed him, to any justice for such county or place, such justice shall, upon oath, examine into and ascertain the reasonable expences, and shall, without fee, by his warrant, order the treasurer to pay the same, which the treasurer is required to do as soon as he receives such warrant.

Whereas

Whereas constables may be at a great Charge for charge in relieving, conveying with passes, ^{vagrants.} and carrying rogues, &c. to the house of correction, and have no power to make rates to reimburse themselves; therefore such constables, together with the churchwardens and overseers, and other inhabitants shall make a rate in the same manner as the poor rate by the 43 *El. c. 2.* which being confirmed under the hands and seals of two justices, may be levied by distress. 13 and 14. *G. 2. c. 12.*

It is observed by Mr. *Nelson* and Mr. *Shaw*, that this rate may be made for the purpose abovementioned, and for other parish charges. But there seems to be no such power given by the statute.

Every high constable at the general or quarter session, shall if thereunto required, ^{Account.} account for the general county rate by him received; on pain of being committed to gaol until he shall account, and shall pay over the money into their hands, according to the order of the said court, on the like pain: And their accounts and vouchers after having been passed at the said sessions, shall be deposited with the clerk of the peace, to be kept amongst the records, and inspected by any justice of the peace without fee. 12 *G. 2. c. 29. s. 8.*

And in the same manner as constables are ^{Removal.} chosen, in the same manner they are to be removed; so that if there shall be cause to remove and put an high constable from his place, it hath not been thought fit that any one or two justices should do it upon their discretion, but that it should be done by the
grea-

greater part of the justices of that division, and that for the same just cause; or else that it be done at the sessions. *Dalt. c. 28.*

And it appears clear, that the sheriff or steward of the leet, having power to place a constable in his office, have consequently a power to remove him. *2 Haw. 63.*

And the justices of the peace have always used, for sufficient reason, to displace such constables, as have been chosen and sworn by them. *2 Haw. 65.*

Appointing
constables in
Westminster.

By the 29 G. 2. c. 25. The dean, or high steward of *Westminster*, or his deputy, is required (calling to his assistance the burgesses, if the dean, or high steward or his deputy shall think fit) at the court leet, to be holden on *Tuesday* next after *Michaelmas-day* in every year, yearly to appoint eighty fit persons residing within the city and liberty of *Westminster*, being artificers, or persons using any trade of buying or selling (ale-house-keepers, victuallers or persons retailing spirituous liquors, only excepted) to be constables for the said city and liberty, being duly presented thereto in manner after mentioned.

The constables who shall be so appointed shall be chosen out of the several parishes in *Westminster* as followeth, viz.

Out of the parish of St. Margaret	14
Out of St. John the Evangelist	4
Out of St. Martin in the Fields	14
Out of St. George, Hanover-square	12
Out of St. James's	14
Out of St. Ann	8
Out of St. Paul, Covent Garden	6
Out	

Constables.

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Out of St. Clement Danes 6

Out of St. Mary le Strand 2

By this act the summoning a leet jury, is directed who are to present double the number above directed for each parish, of persons to serve the office of constable, out of which number the court shall, in the proportion above mentioned, appoint eighty persons to serve the office of constable for the year ensuing. 20. G. 2. c. 25.

Any person so appointed, and refusing to serve the office of constable, shall forfeit 8*l*. and no person to serve as constable more than once in seven years.

And by the same statute, the said dean or high steward, or his deputy, shall at the said court leet, to be holden on *Tuesday* next after *Michaelmas* day yearly, appoint an able person, being an artificer, or using some trade of buying and selling, not being an ale-house-keeper, victualler or retailer of spirituous liquors, to be high constable for the city and liberty of *Westminster* for the space of one year or until another be appointed. No person shall serve the office of high constable for more than three years together. The penalty is 20*l*. for refusing to serve the office of high constable.

Appointing
high constable
of *Westminster*.

By the statute 31 *Geo. 2. c. 17.* All repairs of pavements, and removal of annoyances belonging to parish churches, publick buildings, or grounds, to be done by the churchwardens; if belonging to markets, by the proprietors, &c. to hospitals, alms-houses, charitable foundations, &c. by the principal officer

Of Annoyances in
Westminster.

officer thereof, and to private grounds, by the owners. The annoyance jury may present bad pavements and annoyances, first giving notice of their intention to the proper persons, and if the same be not removed within fourteen days, may amerce the said persons, according to the nature of the offence. *Stat. 1.*

The annoyance jury, where requisite, may order the speedy removal of any annoyances or obstructions, and on neglect or refusal to comply, may amerce the offender in a sum not exceeding 40s. *Stat. 6.*

No person shall set up a house or fence in the streets without licence first obtained from the court, for which licence shall be paid 5s. under the penalty of 40s. such licence to be no defence against prosecution for a nuisance. *Stat. 7.*

Weights and measures in *Westminster* to be sized, sealed, and marked by the proper officer, for sealing and marking the same; for which shall be paid, for every bushel 4d. for every half bushel 2d. for every peck, half peck and quarter peck 1d. for all half pecks, or quarter pecks, per dozen 10d. for every sack 2d. for every ale and beer measure 1d. for every one hundred weight 4d. for every half hundred weight 2d. for all pound weights and all other weights, under half a hundred weight one halfpenny, for all ounce weights, and all other weights under a pound, one farthing. All weights and measures belonging to persons who deal by weight or measure within the said city and liberty, which shall

shall not be sealed and marked as aforesaid, shall be deemed unlawful, and may be destroyed, and the owners amerced in a sum not exceeding 40s. *Sec. 9.*

The sealing officer shall pay half yearly to the deputy steward, a moiety of his profits. *Sec. 10.*

Aged persons are exempted from serving as constables, or as leet or annoyance jurymen. *Sec. 13.*

Adjournments of the court-leet, court may amerce jurymen for non-attendance, or other neglect. *Sec. 14.*

The high bailiff or his deputy, shall execute all warrants of the court-leet, or court of burgesses, and pay over the sums received, on penalty of being fined by the court.

Fines imposed on the high bailiff, &c. for default in the premisses, to be levied by the high constable by distress and sale. *Sec. 15.*

The duty and authority in general of constables in their several towns, parishes, &c. is as large, of nearly the same as the high constable's, in his hundred: they are to keep the peace, and may, as already observed, break into a house to see the peace kept, make fresh pursuit into another county, &c. command all persons to assist them, and to take into custody any whom they see committing a felony, or breaking of the peace. Constables
is at large, of
their keep-
ing the
peace, &c.

The duty of a constable is to be considered under the several heads following, &c. Particular
duties of
constables,

affrays, alehouses, arms, arrests, artificers, assault, bakers, bastardy, bawdy-houses, beggars, bridges, butter, buttons, cambrics,

F

car-

Constables.

carriages, cattle, clothiers, coals, conventicles, corn, curriers, customs, deer stealing, deserters, disorderly houses, distillers, distresses, drunkenness, dyers, escaped, excise, felons, fire, fish, forcible-entry, foreign goods, forestallers, game, gaming, gaol, gaolers, gunpowder, hawkers, hay market, hedge breakers, highways, hops, horses, houses of correction, hue and cry inns, juries, labourers, lamps, land tax, linen, lunatics, madmen, malsters, manufactures, measures, militia, night-walkers, orchards robbed, physicians, plague, players, popish recusants, post letters, presentments, prisons, prisoners, riots, robbery, rogues, sail-cloth, salt, servants, shoemakers, smugglers, soldiers, spirituous liquors, Sundays, superseas, swearing, taylors, tithes, tobacco, turnpikes, vagrants, warrants, watch, watermen, weights, wrecks, &c.

Of billeting
Soldiers.

By the 31 C. 2. c. 1. No military or civil officer, nor any other person whatsoever, shall presume to place, quarter or billet any soldier, on any subject of any degree, quality, or profession whatsoever, without his consent; and every such subject may refuse to sojourn or quarter any soldier, notwithstanding any command, order, or warrant, for billeting whatever. s. 54.

Constables
may billet.

By the mutiny act, the constables and other chief officers and magistrates of cities, towns, villages, and other places, and in their default or absence, any one justice in or near such place, and no other, shall and may quarter and billet the officers and soldiers in
inns,

inns, livery stables, alehouses, victualling-houses, and the houses of sellers of wine by retail to be drank in their own houses, or places thereunto belonging, (except persons who keep taverns only, being free of the vintners company in London) and all houses or persons selling brandy, strong waters, cyder, or metheglin, by retail to be drank in houses, (except the houses, of distillers who keep places of distilling brandy and strong liquors, and of shopkeepers * whose dealings shall be more in other goods than brandy or strong waters, and who do not suffer tippling in their houses) and no other, and in no private houses whatsoever; nor shall any more billers be ordered, than there are effective soldiers; and if any constable, or such like officer, as aforesaid, shall quarter or billet any such officer or soldier in any private house, without the consent of the owner, such occupier shall have his remedy at law against such constable or officer for damages; and if any military officer shall presume to quarter soldiers otherwise than by this act, or shall offer any menace to any mayor, constable, or other civil officer, tending to deter them from doing their duty, he shall on being convicted thereof before any two of the next justices, by the oath of two witnesses, be cashiered and disabled to hold any military employment; provided the conviction be affirmed at the next quarter sessions, and a certificate thereof be

* Shopkeepers, by 17 G. 2. c. 17. are not all owed to retail spirituous liquors.

Constables.

transmitted to the judge advocate, who shall certify the same to the next court martial.

If any person shall be aggrieved, or think himself aggrieved, by having more soldiers billeted than is his proportion, on complaint thereof to one justice, or if the person, so billeting be a justice, then on complaint to two justices, they may relieve him.

No justice of the peace having any military command, shall be concerned in quartering soldiers under his immediate command; and all things done by him therein shall be void.

Constables
not to take
a reward for
billeting.

If any constable, or other proper officer, shall neglect his duty in billeting, for the space of two hours, sufficient notice having been given before, of the arrival of the soldiers, or shall take any reward to excuse any person; or if any person liable shall refuse to receive any soldiers, or to furnish them as required by this act, and be thereof convicted, before one justice, by confession, or oath of one witness, he shall forfeit 5*l.* (or any sum not exceeding 5*l.* nor less than 40*s.*) by distress, by warrant of such justice, to be directed to any other constable, or overseer, where the offender shall dwell, for the use of the poor of the said parish.

Any person who shall take any money of any person, to be excused the quartering of soldiers, shall be cashiered and incapacitated. Any officer, military or civil, who shall quarter any of the wives, children, or servants of officer or soldier, in any house, against the consent of the owner; if he is an officer of the army, he shall on proof made thereof to the

Constables.

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the commander in chief of the army, or judge advocate, be cashiered; and if a constable, or other civil officer, he shall forfeit to the party grieved 20 s. on proof thereof to the next justice, by distress.

All officers and soldiers, billeted as above directed, shall be received and furnished with diet and small beer, paying for the same as hereafter mentioned.

If any person on whom soldiers are billeted or quartered, shall chuse rather to furnish them with candles, vinegar, and salt, and with either small beer or cyder, not exceeding five pints a day, gratis, and also allow them the use of fire, and the necessary utensils for dressing and eating their meat, and shall give notice thereof to the commanding officer, and shall furnish the same accordingly; they shall then provide their own victuals, and the officers shall pay the sums out of the subsistence money, for diet and small beer to such soldiers, and not to the persons on whom they are quartered; except on a march, or recruiting.

What soldiers are to be allowed.

Where horse or dragoons shall be quartered, the men and their horses shall be billeted in one and the same house (except in case of necessity;) and in no case there shall be less than one man billeted, where there shall be one or two horses, nor less than two men where there shall be four horses, and so in the same proportion.

Military officers may remove or exchange men or horses, with others quartered in the same town; provided the numbers so exchanged

changed are equal; and the constables, or other officers, shall billet them accordingly.

A justice of the peace by his warrant, may command any constable or other officer, to give an account in writing of the number of officers and soldiers billeted by them, and the names of the persons on whom they are billeted, with the place where they dwell, and the signs, if any; that it may appear where they are quartered, the better to prevent abuses in billeting of them.

The petty constables shall in *Westminster*, deliver lists on oath at every quarter sessions, of the houses and persons obliged to receive soldiers quartered, and the number billeted in each house; the lists to remain with the clerk of the peace, to be inspected without fee; and the clerk shall deliver copies at 2d. a sheet, containing 150 words; constables making default shall forfeit 5l. to the poor by distress, by warrant of one justice; for want of distress, to be imprisoned not exceeding three months, nor less than one.

All officers who shall receive the pay or subsistence money, shall immediately upon receipt thereof, give public notice to all persons keeping inns or other places, where soldiers are quartered to repair to their quarters, at such time as they shall appoint for distribution thereof to the officers and soldiers, which shall be within four days after receipt thereof: And the said inn-keepers and others shall be first paid, before any part of the pay be distributed to the officers or soldiers; provided

vided the accounts exceed not, for a commission officer of horse under the degree of a captain, for diet and small beer 2s. a day; nor for a commission officer of dragoons under the degree of a captain 1s. and for each horse 6d. nor for one light-horseman's diet, and hay and straw for his horse 1s. nor for one dragoon's diet, and hay and straw for his horse 1s. nor for one foot soldier's diet 4d.

A constable may take up any one reasonably suspected to be a deserter, and carry him before a justice of the peace, who shall examine such suspected person, and if he shall be found to be a deserter, either by his own confession, or the oath of one witness, or by the knowledge of such justice, he shall be sent by such justice to the county gaol or house of correction (or if in *London* to the *Savvy*) and transmit an account thereof to the secretary at war; and the keeper of such gaol or house of correction, shall receive the subsistence of such deserter for his maintenance while in custody, but shall not be intitled to any fee for his imprisonment.

Highways.

IT is agreed that there are three kinds of ways; the first, a foot way; secondly, a foot and horse way; thirdly, a foot, horse, and cart way. *1 Inst. 56.*

F. 4

Any

Any one of the above mentioned ways, which is common to all the king's subjects, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is likewise a thoroughfare to other towns, may properly be called a highway. *1 Hawk. 201.*

And therefore, every way from town to town may be called a highway, because it is common to all people; and consequently that a nuisance therein is a common nuisance, and punishable by indictment; but a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which ends there, and is solely for the benefit of the inhabitants of such parish, house, or village, may properly be called a private way, but not a highway, because it doth not belong to the people in general, but only to some particular persons; each of whom may, it seems, have an action on the case for a nuisance therein. *1 Hawk. 201.*

If I have a private way without a gate, and a gate is hung up; an action lies, upon the case, for I have not my way as I had before. *Litt. R. 267.*

But if a way belonging to any man becomes not passable, or very bad, by the owner of the land tearing it up with his carts, so that it becomes filled up with water; yet he who has the way cannot dig the ground to let out the water, he having no interest in the soil, *Godb. 52.* But he may, in such case, bring his action against the owner of the

the land for spoiling the way, or perhaps he has right to go out of the way, upon the land of the wrong doer, as near to the bad way as he can.

But where a private way is spoiled or destroyed by persons who have a right to pass thereon, and not occasioned by the default of the owner of the land; it seems that those who have the benefit of the way ought to repair it, and not the proprietor of the soil, unless he is bound thereto by long custom or special agreement.

A river common to all men, is called an highway. 1 *Haw.* 201. And in all indictments for a robbery on the river *Thames*, it is called the King's highway.

Where a new road is made, pursuant to a writ and inquisition thereupon found, after the person who sued it out, hath once made the said road, the parishioners ought to keep it in repair for the future; because, as they are discharged from the repairing of the old road, no new burden is laid upon them by such new road, their labour being only transferred from one place to another. 3 *Mik.* 766.

But if such new road shall lie in another parish, the person who sued out the writ, and his heirs, ought not only to make it, but also to keep it in repair, otherwise the parishioners would have a new and additional charge upon them, and no recompence by the former road being taken away. *M. Venner and Lucy*, Jan. 29, 1764.

The freehold of the highway, is his that hath the freehold of the soil; but the free-

passage is for all the King's subjects. 2 Inst.
705.

It seems agreed, that the general charge of repairing all highways lies on the occupiers of the lands in the parish where such highways are. There is however no doubt but particular persons may be liable to the general charge of repairing a highway, in two cases; that is, in respect of an inclosure, or by prescription. And if the way is not sufficient, any person may break down the inclosure and go over the land, and justify it, till a proper and sufficient way is made. 3 Salk. 182.

Consequently, if there be an old hedge which hath been time out of mind on one side of the way, and any person having land on the other side makes a new hedge, he shall be charged with the whole repair. 1 Sid. 464.

A particular person may be compelled to repair a highway, in respect of a prescription, and a corporation aggregate may be bound to do it, by force of a general prescription, that it ought and hath a long time used to do it, without shewing that it used to do so, for any consideration; because such corporation in the opinion of law never dies, and if it were ever bound to perform such a duty, it must continue always so; nor is it any plea, that such corporation hath done it out of charity, for what it hath ever done, it shall be presumed to have been ever bound to do: but a person cannot be charged with such a duty by a general prescription from what his ancestors have done,

done, unless some special reason be assigned, as the having land descended from them, which are holden by such service. *1 Haw. 202.*

It seems, however, that an indictment that charges a tenant in fee simple, with having used of right to repair such a way on account of the tenure of his lands, is certain enough, without adding, that his ancestors, or those from whom his estate descended to him, have always so done; for that is implied. *1 Haw. 283.*

The indictment must however set forth, where those lands lie. *2 H. 181.*

By the common law, any person may abate a nuisance to a highway, and remove the materials, but he cannot convert them to his own use. *1 Haw. 214.*

To permit or suffer the ditches adjoining to a highway to be foul, in consequence of which it is impaired, is a nuisance at common law. *1 Haw. 212.*

And it appears to be a nuisance at common law, to suffer the boughs of trees growing near the highway, to hang over the road so as to incommode the passage. *1 Haw. 212.*

And it seemeth, that he who hath trees next adjoining to the highway, and hanging over it, so as to annoy the people, is bound by the common law to lop the same; and that any person may justify the lopping such trees, so far as to remove the nuisance. *1 Haw. 213.*

A gate erected in a highway, is a common nuisance, as it interrupts the people in that free passage which they before enjoyed,

and were intituled to; but where such a gate has continued there time out of mind, it shall be inferred, that it was set up at first by consent, on a composition with the owner of the land on the laying out the road; and in that case the people had never any right to a freer passage than that which they now enjoy.

1. *Haw.* 199.

It seems to be implied in all penal statutes, that no person ought to be convicted of any offence against them, without notice of the accusation made against him, and an opportunity of defending himself; therefore it seems certain, that no one ought to be punished for any of the said offences, without being called upon to answer for himself, and having liberty to traverse the matters that are alleged against him. 1. *Haw.* 219.

It is no excuse for the inhabitants of a parish, being indicted at common law, for not amending and repairing the highways, that they have done what is required of them by statute; for these statutes being wholly in the affirmative, and made in aid of the common law, and to supply its defects, they shall not be construed to abrogate any provision thereby made for these purposes. 1. *Haw.* 204. So that at all events, the parish may be compelled to make their ways good.

Stat.

Star. 13 G. 3. c. 78, intituled,

An act to explain, amend, and reduce into one act of parliament, the statutes now in being, for the amendment and preservation of the publick highways within that part of Great Britain called England, and for other purposes.

WHEREAS the laws now in being ^{Preamble.}
for the amendment and preservation
of the highways, require some explanation
and amendment, be it therefore enacted, by
the King's most excellent Majesty, That ^{On Sept. 22,}
from henceforth, upon the twenty-second day ^{yearly, a}
of September, in every year, unless that day ^{list is to be}
shall be Sunday, and then on the day follow- ^{made of at}
ing, the constables, headboroughs, tything- ^{least ten per-}
men, churchwardens, surveyor of the high- ^{sons, by the}
ways, and householders, being assessed to any ^{constables,}
parochial or publick rate of every parish, ^{&c. at the}
township, or place, shall assemble at the ^{usual place}
church or chapel of such parish, &c. or if ^{of publick}
there shall be no church or chapel, then at ^{meetings.}
the usual place of publick meetings for such
parish, &c. at eleven in the forenoon: And
the major part of them, shall make a list of ^{Qualifica-}
the names of: at least ten persons living with- ^{tion of sur-}
in such respective parishes, &c. who have ^{voyors.}
an estate in lands, tenements, or heredita-
ments within such respective parish, or place,
in their own right, or in the right of their
wives, of ten pounds *per annum*; or a per-
sonal estate of one hundred pounds; or are
occupiers or tenants of houses, lands, &c.
of the yearly value of thirty pounds: And

if

if there are not ten persons having such qualifications, then they shall insert in such list the names of so many of them as are so qualified, together with the names of the most sufficient inhabitants of such parish, &c. not so qualified, as shall make up the number ten, if so many can be found; if not, so many as shall be there resident, to serve the office of surveyor of the highways: And the constable, headborough, or tythingman, of such parish, &c. shall, within three days after such meeting, transmit a duplicate of such list to one of the justices within the limits living in or near the same; and shall also return the original list, agreed upon at such meeting, to the justices at their special sessions in the week next after the Michaelmas general quarter sessions of the peace in every year; and shall also, within three days after making the said list, give personal notices to, or cause notices in writing to be left at, the places of abode of the several persons contained in such list, informing them of their being so named, that they may appear before the justices at the said special sessions to accept such office, or to shew cause against their being appointed: And such justices are to hold such special sessions at such convenient places within their limits, as they shall judge proper; and to give notice when and where they intend to hold the same to the constables, headboroughs, or tythingmen, of every such parish, &c. at least ten days; and the said justices, from the said lists, by warrant under their hands and seals, shall appoint one,

A duplicate of such list transmitted to one of the justices, and the original list to the special sessions, by the constable, &c.

Notices to the persons contained in the list.

The justices to give ten days notice of holding special sessions to the constables, &c.

and may appoint from the lists such number of

one, or more of such persons, if he or they shall think him or them qualified for the office, if not, one, two, or more of the other substantial inhabitants or occupiers of lands, which ap- living within three miles thereof, if any such pointment can be found; which appointment shall, by shall be noti- the constables, &c. be notified to every per- fied to the fons son so appointed by the said justices, within named, by three days; by serving him with the said war- the consta- rant, or by leaving the same at his house, bles, &c. and the sur- or usual place of abode; and every person so veyor shall appointed, if he accepts the office, shall be hold his office for one surveyor of the highways for the said parish, year, or less, &c. for the year ensuing, and the said justi- Justices to ces shall then and there give such surveyors a give a charge charge, for the better performance of their for the per- duty. And if any of the said persons, so formance of surveyor's appointed, shall refuse or neglect to appear at duty. such special sessions, and accept the said of- Persons ap- fice, or shall not, within six days after being pointed from the list re- served with such warrant of appointment, fusing to serve shall forfeit signify his acceptance thereof, in person, or shall forfeit 5*l*. by writing, to one of the said justices, he and those shall forfeit five pounds; and if any person not in the so appointed by the said justices, whose name list, on refu- was not contained in such list, shall refuse sal, shall or neglect to accept the said office, or shall forfeit 5*os*. not, within six days after being served with such appointment, shew to one of the justices signing such appointment, sufficient cause why he should not serve, he shall forfeit fifty shillings: But no person who hath served the said office for one year, shall be liable to be again ap- appointed for the same place, within three pointed within 3 years without his consent; but if no such years after. list

If no such list be made, or the person appointed refuses to serve, another person may be appointed.

and a salary fixed.

not exceed-
8th part
of a 6d. as-
sessment.

Justices may require the constables, &c. to return an account, in writing, of the sum which the assessment of 6d. per pound will raise.

40s. penalty on the constables, &c. not making or returning such lists; or not giving notice.

list shall be made and returned, or the said justices shall make such appointment, and the person appointed shall refuse to serve, the said justices, or two of them, shall, at the said special or some subsequent sessions, to be held within one month after, appoint some other person to be surveyor of such place, at their discretion; and may fix such salary for such surveyor, out of the said forfeitures, and all other forfeitures, fines, &c. to be levied, and raised, under the authority of this act, within such place respectively, as such justices shall think fit, not exceeding one-eighth part of what shall have been raised by an assessment of sixpence in the pound, for the use of the highways within such place; and the said justice may require the constables, headboroughs, tithingmen, and surveyor, of every such place, or any of them, to return to them, at such time and place as they shall appoint, an account, in writing, of the sum which such assessment of sixpence in the pound hath raised, or will, in his or their opinion, raise, within such place: And if the constables, &c. shall neglect or refuse to make such list; or if they shall not return the said list of names when made, and such duplicate thereof, as aforesaid, and give such notices, and serve such warrants, as in this act is directed; or if the said constable, headborough, tithingman, and surveyor, or any of them, shall neglect to return such account of the amount of such assessment, when so required as aforesaid; every constable, &c. so neglecting,

shall

shall, for every such default respectively, forfeit forty shillings.

Stat. 2. In all cases where the said justices, upon refusal of the person so nominated surveyor to accept the said office, shall appoint any other person, with a salary as aforesaid, the said justices shall appoint one substantial inhabitant of such place, for assistant to such surveyor, for the several purposes hereafter mentioned; and if the person so appointed assistant shall, having received notice, refuse to accept that office, he shall forfeit fifty shillings. And such justices may appoint any other substantial inhabitant of such place, for assistant to such surveyor; and if such second appointed assistant shall refuse to accept the said office, he shall forfeit fifty shillings; and the said justices may appoint any other inhabitant, assistant to such surveyor, who shall be intitled to the said forfeitures before mentioned; and also to some further allowance by way of salary, if the said justices shall think it necessary, and shall order the same, provided that no person so appointed assistant for one year, shall be liable to be appointed within three years next following such first appointment, without his consent.

Stat. 3. The surveyor of every place, who shall not reside therein, but shall be appointed with such salary, shall, if required by the churchwarden, overseer of the poor, or any principal inhabitant of the place, for which he shall be so appointed surveyor, within fourteen days after, give a bond upon paper, without

Where the justices, upon such refusal, appoint another person, they are to appoint one substantial inhabitant for his assistant; and, on his refusal to accept that office, he shall forfeit 50s. and the justices appoint another, who, on refusal, shall also forfeit 50s. and, they may appoint a third person, who shall be intitled to the said forfeitures, and to a further allowance by way of salary.

Bond to be given by the surveyor appointed with a salary.

to account
for the mo-
ney which
shall come to
his hands.

Duty of the
assistant sur-
veyor.

Forfeitures
for neglect
of his duty.

Surveyors to
send orders
upon the
assistant for
payment of
all sums
amounting
to 40s. or
upwards.

without stamp thereupon, to some person to be nominated by the said justices, with sufficient surety, to account for the money which shall come to his hands as surveyor; which bond shall be good and effectual in law.

Sec. 4. The assistant shall, to the best of his skill and judgment, assist the said surveyor, whenever requested by him, in calling in and attending the performance of the statute duty; in collecting the compositions, fines, penalties, and forfeitures; making and collecting the assessments; in making out and serving the notices authorized by this act; and in such other things as shall be reasonably required of him by the surveyor. And such assistant shall justly and truly account with, and pay to, the said surveyor, or to his order, all the money which shall come to his hands as assistant, by the means as aforesaid; and, in default thereof, shall forfeit double the value of the money by him so received; and if such assistant shall make default in the performance of any of the duty required from him by this act, he shall forfeit, for every offence, not exceeding five pounds, nor less than forty shillings, at the discretion of the justice or justices: And the said surveyor shall send orders, in writing, upon the said assistant, for the payment of all sums due to any persons, for work or materials, by virtue of this act, which amount to forty shillings, or upwards; and such surveyor shall not be responsible for any sums of money which shall be received by the assistant,

ant, and shall not be paid to such surveyor, or to his order.

Sect. 5. Provided always, That if two parts out of three of those so to be assembled for the nomination of surveyors, shall agree in the choice of any particular person of skill and experience, to serve the said office of surveyor, and in the settling of a salary for his trouble therein, and shall return his name, together with the list herein before directed, to the justices at their said sessions, to be held in the week next after the *Michaelmas* quarter sessions; that then, it shall be lawful for the said justices, to appoint such person to be surveyor for such place, and allow him the salary mentioned in such agreement, which shall be raised and paid in the manner herein before mentioned; and in case any surveyor die, or become incapable of executing that office, before such next special sessions for appointing surveyors, the said justices, or any two of them, may, at some special sessions, nominate such person as they shall think proper, to execute the said office, until such next special sessions as aforesaid; and if such deceased surveyor had a salary, they may allow the same salary to his successor, in proportion to the time he shall serve; and if the said justices at their said special sessions, or at any time afterwards, shall appoint more than one person for surveyor of any place, all persons so appointed, shall be comprehended under the word *surveyor* in every part of this act.

If two parts out of three shall agree in the choice of a person of skill to serve the office of surveyor, and in settling his salary,

Justices may appoint such person, and allow him the said salary; and if any surveyor shall die, the justices may appoint another, and allow him the salary.

If more surveyors than one shall be appointed, all comprehended under the word *surveyor*.

Sect.

Notree, &c.
allowed to
grow or
stand within
15 feet of
the centre of
the high-
way;

on forfei-
ture of 10s.
by the
owners.

Hedges and
trees adjoining
to high-
ways, by
whom to
be cut and
pruned.

Sett. 6. No tree, bush, or shrub, shall be permitted to grow, in any highways, within the distance of fifteen feet from the centre thereof, (except for ornament or shelter to the house, building, or court-yard of the owner thereof), or hereafter to be planted; but the same shall be cut down, grubbed up, and carried away, by the owner or occupier of the land or soil, within ten days after notice given by the said surveyors, or any of them, on pain of forfeiting, ten shillings.

Sett. 7. The possessors of the land next adjoining every highway shall cut, prune, and plash their hedges, and cut down or prune and lop the trees growing in or near such hedges or other fences, (except those trees planted for ornament or shelter), in such manner that the highways shall not be prejudiced by the shade thereof; and if such possessor shall not, within ten days after notice as aforesaid, cut, prune, and plash, such hedges, and cut down and lop such trees, it shall be lawful for the surveyor to make complaint thereof to some justice of the limits, who shall summon the possessor of the said lands to appear before the justices at some special sessions, to answer to the said complaint; and if it shall appear to such justices, that such possessor had not complied with the requisites of this act, it shall be lawful for the said justices, upon hearing the surveyor and the possessor of such land, or his agent, (or in default of his appearance, upon having due proof of the service of such summons,)

Highways.

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to order such hedges to be cut, plashed, and pruned, and such trees to be cut down, as aforesaid; and if the possessor of such lands shall not obey such order, within ten days, and he shall have had due notice thereof, he shall forfeit two shillings for every twenty-four feet in length of such hedge which shall be so neglected to be cut and plashed; and two shillings for every tree which shall be so neglected to be cut down or pruned, and lopped; and the surveyor, in case of such default made by the possessor, shall cut, prune, and plash such hedges, and cut down or prune and lop such trees, in the manner directed by such order; and such possessor shall pay, over and above the said penalties, the expences of doing the same; or, in default thereof, such expences shall be levied, together with the said forfeitures, upon his or her goods and chattels, by warrant from a justice of peace.

Sec. 8. Ditches, drains, or watercourses, of a sufficient depth and breath, for the keeping all highways dry, and conveying the water from the same, shall be made, and kept open, and sufficient trunks, tunnels, plats, or bridges, shall be laid where any cartways, horseways, or footways, lead out of the said highways into the lands or grounds adjoining thereto, by the occupiers of such lands or grounds; and every person who shall occupy any lands adjoining to, or near such highway through which the water hath used to pass from the said highway, shall as often as occasion shall be, open, cleanse, and scour,

Occupiers of lands shall make sufficient drains, plats, or bridges, where cartways, &c. lead out of highways into such lands:

They shall forfeit, for every offence, 10s. the ditches, watercourses, or drains, for such water to pass without obstruction; and every person making default, after ten days notice to him given by the said surveyor, shall forfeit ten shillings.

Persons laying stone, timber, straw, &c. or soil out of ditches, &c. shall, for every offence, forfeit 10s. *Sect. 9.* If any person shall lay, in any highway, any stone, timber, straw, dung, or other matter, or in making, or cleansing the ditches, shall permit the soil dug out of such ditches, to remain in such highway, so as to obstruct the same, for the space of five days after notice thereof; every person shall, for every such offence, forfeit ten shillings.

Stone, timber, hay, straw, &c. laid within 15 feet of the centre of the highway. *Sect. 10.* If any stone or timber, or any hay, straw, stubble, or other matter, for the making of manure, or on any other pretence, shall be laid in any highway, within the distance of fifteen feet from the centre, and shall not, within five days after notice by the surveyor, or some person aggrieved thereby, be removed, it shall be lawful for the possessor of the lands adjacent, or any other person, by order from some justice of peace, to remove the said stone, timber, hay, straw, dung, or other matter, and dispose of the same, to his and their own use.

Obstruction in the highways by carriages or implements of husbandry. *Sect. 11.* If any person shall leave any waggon, cart, or other carriage, or any plough or instrument of husbandry, in any of the said highways, (except, during such reasonable time as the same shall be loading or unloading, and standing as near the side of such highway as conveniently may be), so as to interrupt the free passage of any other carriage,

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carriage, or of his Majesty's subjects; he shall forfeit ten shillings.

he makes the offender forfeit 10 s.

Sec. 12. The surveyors of the highways, shall, at all such times as they shall judge proper, view all the common highways, trunks, tunnels, plats, hedges, ditches, banks, bridges, causeways, and pavements, within the place, for which they shall be appointed surveyors; and in case they shall observe any nuisances, incroachments, obstructions, or annoyances, they shall, as soon as conveniently may be, give, or cause to be given, to any person doing, or permitting the same, personal notice, or notice in writing, to be left at his, her, or their usual places of abode, specifying the particulars wherein such nuisances, defaults, obstructions, or annoyances, consist; and if such nuisances, obstructions, or annoyances, shall not be removed, and the ditches, drains, gutters, and water-courses aforesaid effectually made, scoured, cleansed, and opened, and such trunks, tunnels, plats, and bridges, laid, and such hedges cut and pruned, within twenty days after such notice, the said surveyors shall be authorised, forthwith to remove such nuisances, obstructions, or annoyances, and open, cleanse, and scour such ditches, gutters, and watercourses, and make or amend such trunks, tunnels, plats, or bridges, and cut and prune such hedges; and the person so neglecting to make, or open and cleanse such ditches, &c. shall forfeit, for every foot in length which shall be so neglected, one penny; and the said surveyors shall be reimbursed what expences

Surveyors duty, on taking a view of the highways, in respect of nuisances, obstructions, &c.

If the offender does not remove such nuisance; &c. after notice,

the surveyor shall do it.

and the of-
fender shall
pay the
charges
thereof.

expences they shall be at in removing such nuisances, &c. and in making or attending such trunks, tunnels, plats, or bridges, and in cutting and pruning such hedges, by the person who ought to have done the same, over and above the said forfeiture; and if such person shall, upon demand, refuse to pay the charges and expences occasioned thereby, and the said forfeiture of one penny per foot, the said surveyor shall apply to any justice of the peace; and, upon making oath before him, of notice being given to the defaulter, and of the said work being done by such surveyor, and of the expences attending it, the said surveyor shall be repaid by such person all such his said charges; or, in default of payment, the same shall be levied in such manner as the penalties and forfeitures hereby inflicted are directed.

Times of
cutting
hedges,

and of fel-
ling trees,
&c. grow-
ing in the high-
ways.

Sec. 13. Provided that no person shall be compelled, nor any surveyor permitted, to cut or prune any hedge at any other time than between the last day of *September* and the last day of *March*; and that nothing herein contained shall extend, to oblige any person to fell any timber trees growing in hedges at any time whatsoever, except where the highways shall be ordered to be enlarged, as herein-after mentioned, or to cut down or grub up any oak trees growing within such highway, or in such hedges, except in the months of *April*, *May*, or *June*; or any ash, elm, or other trees, in any other months than *December*, *January*, *February*, or *March*.

Sec. 14.

Sec. 14. And where the ditches, gutters, or watercourses, shall not be sufficient to carry off the water which shall lie upon and annoy the highways; then, and in every such case, it shall be lawful for the said surveyors, by the order of any one or more of the said justices, to make new ditches and drains in the said lands and grounds adjoining such highways, or in and through any other lands, if it shall be necessary, for the more effectually carrying off such water from the said highways; and the said surveyors, and their workmen, are hereby authorised to go upon the said lands for the purposes aforesaid: Provided, that the said surveyors make proper trunks, tunnels, plats, bridges, or arches, over such ditches, gutters, or watercourses, where the same shall be necessary, for the convenient use and enjoyment of the lands through which the same shall be made, and from time to time, keep the same in repair; and also make satisfaction to the occupier of such lands which are not waste or common, for the damages which he, she, or they, shall sustain thereby; to be settled and paid in such manner as the damages for getting materials in several or inclosed lands are hereafter directed to be settled and paid.

Where the old ditches, gutters, or watercourses are insufficient,

new ones may be made.

Sec. 15. And the said surveyors of the highways shall make, support, and maintain every public cartway leading to any market town, twenty feet wide at the least; and every public horseway or driftway, eight feet wide at the least, if the ground between the fences inclosing the same will admit thereof.

Cartways to market towns to be made 20 feet wide. Horseways or driftways, 8 feet wide.

Justices may
order nar-
row roads to
be widened,
yads 31. 32. 33.

10. 11. 12.
13. 14. 15.

or diverted
and turn-
ed.

Surveyors to
agree with
owners of
lands for re-
compence;

Stat. 16. Provided, that where it shall ap-
pear, upon the view of any two or more of
the said justices, that the ground of any high-
way between the fences thereof is not of suf-
ficient breadth, and may be conveniently
widened; or that the same cannot be conve-
niently enlarged, and made commodious for
travellers, without diverting and turning the
same; such justices are hereby impowered,
within their respective jurisdictions, to order
such highways respectively to be widened, or
diverted and turned, in such manner as they
shall think fit, so that, when enlarged and
diverted, they shall not exceed thirty feet
in breadth; and that neither of the said pow-
ers do extend to pull down any house or
building, or to take away the ground of any
garden, park, paddock, court, or yard; and
for the satisfaction of the person, bodies po-
litick or corporate, who are seised or possessed
of, or interested in their own right, or in
trust for any other person, in the said ground
that shall be laid into the said highways re-
spectively, so to be enlarged, or through
which such highway, so to be diverted and
turned, shall go, the said surveyor, under
the direction, and with the approbation of
the said justices, shall, and is hereby impow-
ered to make an agreement with him, her,
or them, for the recompence to be made for
such ground, and for the making such new
ditches and fences as shall be necessary, ac-
cording and in proportion to their several and
respective interests therein, and also with any
other person, bodies politick or corporate,
that

that may be injured by the enlarging, altering, or diverting such highways respectively, for the satisfaction to be made to him, her, or them respectively, as aforesaid: And if the said surveyor, with the approbation of the said justices, cannot agree with the said person, &c. or if he, she, or they, cannot be found, or shall refuse to treat, or take such satisfaction as shall be offered to them by such surveyor; then the justices, at any general quarter sessions, upon certificate in writing, signed by the justices making such view as aforesaid, of their proceedings in the premises, and upon proof of fourteen days notice in writing having been given by the surveyor to the owner, occupier, or other person interested in such ground; or to his, her, or their guardian, trustee, clerk, or agent, signifying an intention to apply to such quarter sessions for the purpose of taking such ground, shall impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions; and the said jury shall, upon their oaths, to the best of their judgment, assess the recompence to be made, to the owners and others interested in the said ground, for their respective interests, as they shall think reasonable; not exceeding forty years purchase for the clear yearly value of the ground so laid out, and likewise such recompence as they shall think reasonable, for the making of new ditches and fences on the side or sides of the said highway that shall be so enlarged or diverted, and also satisfac-

and if they cannot agree,

the same may be assessed by a jury,

at the quarter sessions.

On payment
of money as-
sessed,
ground to be
de-m'd a
publick
highway.

tion to any person, &c. that may be other-
wise injured by the enlarging or diverting the
said highways : And upon payment or tender
of the money so to be awarded and assessed
to the person intituled to receive the same,
or leaving it in the hands of the clerk of the
peace of such limit, in case such person can-
not be found, or shall refuse to accept the
same, for the use of the owner of, or others
interested in the said ground, the interest of
the said person or persons, in the said ground,
shall be for ever divested out of them, and
the said ground, after such agreement or ver-
dict as aforesaid, shall be esteemed and taken
to be a publick highway, to all intents and
purposes whatsoever ; saving nevertheless to
the owner of such ground all mines, mine-
rals, and fossils, lying under the same, which
can or may be got without breaking the sur-
face of the said highway ; and also all timber
and wood growing upon such ground, to be
fallen and taken by such owner or owners
within one month after such order shall have
been made, or in default thereof, to be fal-
len by the said surveyor, within the respective
months aforesaid, and laid upon the land ad-
joining, for the benefit of the owner or ow-
ners : And where there shall not appear suffi-
cient money in the hands of the surveyor,
for the purposes aforesaid, the said two justi-
ces, in case of agreement, or the said court
of quarter sessions, after such verdict as afore-
said, shall order an equal assessment to be
made, levied, and collected, upon all and eve-
ry the occupiers of lands, tenements, woods,

tithes

Where there
is not money
sufficient,
assessments
may be
raised by or-
der of the
justices at
their quarter
sessions.

tithes, and hereditaments, in the respective places, where such highways shall lie, and direct the money to be paid to the person or persons so interested, in such manner as the said justices, or court of quarter sessions respectively, shall appoint: And the money thereby raised shall be employed according to the direction of the said justices, or court of quarter sessions, towards the purchasing the land to enlarge or divert the said highways, and for the making the said ditches and fences, and also satisfaction for the damages sustained thereby; and the said assessment, if not paid within ten days after demand, shall, by order of the said justices, or court of quarter sessions, be levied by the said surveyor, in the manner herein-after mentioned: Provided, that no such assessment in any one year shall exceed the rate of sixpence in the pound of the yearly value of the lands, tenements, &c.

not exceeding 6d. in the pound.

Seet. 17. And when any such new highways shall be made, the old highway shall be stopped up, and the land thereof sold by the surveyor, with the approbation of the said justices, to some persons whose lands adjoin thereto, if they shall be willing to purchase the same, if not, to some other person, for the full value thereof: But if such old road shall lead to any lands, house, or place, which cannot in the opinion of such justices be accommodated with a convenient way and passage from such new highway, then, the said old highway shall be sold subject to the right of way and passage to such lands, house, or place

Old highway and soil may be sold by the surveyor,

subject to ancient right of way and passage.

Mines and minerals reserved to the owners.

place respectively, and the money arising therefrom shall be applied towards the purchase of the land where such new highway shall be made: but all mines, minerals, and fossils, lying under the same, shall continue to be the property of the person who would have been intitled to the same, if such old highway had continued there.

Costs of proceedings by whom payable.

Sec. 18. And in case such jury shall give in a verdict for more monies, as a recompence for the right, interest, or property, of any person or persons, &c. than what shall have been offered by the said surveyor, before such application to the said court of quarter sessions; then the expences attending the said several proceedings shall be paid by the surveyor of the said highway, out of the monies in his or their hands, but if they shall give a verdict for no more, or for less monies than shall have been proposed by the said surveyor, then the said expences shall be paid by the person or persons, who shall have refused to accept the recompence so offered as aforesaid.

Highways, brideways, and footways, may be turned by the justices, with the consent of the owners of the lands.

Sec. 19. And when it shall appear, upon the view of any two or more of the said justices, that any publick highway, not in the situation herein-before described, or publick bridle-way, or foot-way, may be diverted, so as to make the same nearer or more commodious to the publick, and the owner of the lands through which such new highway, bridleway, or footway, is proposed to be made, shall consent thereto, by writing under his or their hand and seal, it shall be lawful, by order of such justices, at some special sessions,

sessions, to divert and turn, and to stop up such footway, and to divert, turn, and stop up, and inclose, sell, and dispose of such old highway or bridleway, and to purchase the ground for such new highway, bridleway, or footway, by such ways and means, and subject to such exceptions and conditions, as herein-before mentioned with regard to highways to be widened or diverted; and where any such highway, bridleway, or footway, herein last before described, shall be so ordered to be stopped, and such new highway, bridleway, or footway, appropriated in lieu thereof, it shall be lawful for any person injured by any such order or proceeding, or by the inclosure of any road or highway, by virtue of any inquisition taken upon any writ of *ad quod damnum*, to make his or their complaint thereof, by appeal to the justices of the peace at the next general quarter sessions, after such order made or proceeding had, as aforesaid, upon giving ten days notice in writing of such appeal to the surveyor and party interested in such inclosure, if there shall be sufficient time for that purpose; if not, such appeal may be made upon the like notice to the next subsequent quarter sessions of the peace, which courts of quarter sessions are hereby respectively authorised to hear and finally determine such appeal; and if no such appeal be made, or, being made, such proceedings shall be confirmed by the said court, the said inclosures may be made, and the ways stopped, and the proceedings thereupon shall be binding to all persons whatsoever; and the

Appeal may be made to the quarter sessions to proceedings by writ of *ad quod damnum*, or otherwise.

No such inclosures to be

made until
the new
highways,
&c. shall be
completed.

new highway, bridleway, or footway, shall be, and continue a public highway, bridleway, or footway; but no inclosures of such old highways or bridleway, or stoppage of such footway, shall be made, until such new highways, bridleway, or footway, shall be completed, and so certified by two justices of the peace, which certificate shall be returned to the clerk of the peace, and by him inrolled amongst the records of the said court of quarter sessions; but after such certificate, such old highways, &c. may be stopped up, and the soil of such old highways or bridleway sold, in the manner, and subject to the restrictions herein-before mentioned with respect to highways to be enlarged or diverted by virtue of this act: And where any highway, bridleway, or footway, hath been

and certificate thereof returned to the clerk of the peace.

Concerning those which have been turned above 12 months and no prosecution commenced.

turned above twelve months, and the same have been acquiesced in, and no suit hath been commenced for the turning the same, every new highway, bridleway, or footway, set out and used in the place of that so diverted and turned, shall from henceforth be the public highway, bridleway, or footway, and all persons liable to the repair of any such old highways, bridleway, or footway, so turned, or to be turned, as aforesaid, shall be and continue liable to the repair of such new highways, bridleway, or footway.

In what cases, and in what manner, the old highways, or

Sec. 20. Provided nevertheless, that no common land, lying between the fences of any old highway to be stopped up by virtue of this act shall be inclosed; and where the

land between such fences, not being common land, shall upon a medium, exceed thirty feet in breadth, and not extend to fifty feet in breadth, the same shall not be inclosed until satisfaction shall be made to the owner, for so much thereof as shall exceed the said breadth of thirty feet; and if the parties cannot agree in the satisfaction to be made, it shall be adjusted by the said justices, or the jury, if a jury shall be impanelled; and if the land between the fences inclosing such highways, not being common land, shall exceed fifty feet in breadth upon a medium, or if the said old road, so to be turned shall lie through the open field or ground belonging to any particular person, such person, and also the person or persons intitled to the land between the fences on the side of such highway, shall respectively hold and enjoy the land of such old highway, and pay to the surveyor, for the use of the highways, so much money as shall be agreed upon between the parties; or if they cannot agree, so much as shall be deemed and adjudged by the said justices, or jury, as aforesaid, to be adequate to the purchase of it, estimating such highway at thirty feet in breadth, upon an average.

the lands lying between the fences shall be disposed of.

to Sect. 21. And where any footway shall be diverted through the land belonging to the same person who owned the land through which such old footway lay, the same shall be deemed an exchange only, and no satisfaction shall be made, unless the land for such new footway shall be of greater length,

When old footways are stopped up, and new ones laid out, in what manner the owners of the lands and shall make

and receive
satisfaction.

and value, than that used for such old footway; and where the said footway shall not be turned through the lands belonging to the same person, the damage occasioned by such old footway to the lands through which it lay, if the parties interested shall not agree, shall be adjudged by two indifferent persons, one to be named by the owner of the land, and the other by the said two justices; and if the persons so nominated cannot agree, they shall chuse some third person to adjudge the same, whose determination shall be final; and the money shall be applied in making satisfaction to the owner of the land through which such new footway shall be made.

Justices to
order unne-
cessary high-
ways to be
stopped up.

SECT. 22. And if in any parish, township, or place, where any highway shall be diverted or turned, it shall appear to the justices, that there are other highways within such place, besides that so to be turned, which may, without inconvenience to the publick, be diverted into such new highway hereby authorised to be made, and the charge of repairing such highway may be thereby saved to such parish, &c. it shall be lawful for such justices to order such highway, which shall appear to them unnecessary, to be stopped up, and the soil thereof sold, in such manner, and subject to such restrictions, as are herein-before directed concerning the highways to be stopped up.

Justices, on
information
of surveyor,
may order
highways,
by tenure to
be repaired

SECT. 23. And every surveyor shall give information upon oath to the said justices, of all such highways, and of all bridges, causeways, or pavements upon such highways, as are out of repair, and ought to be repaired
by

by any person or persons, by reason of any grant, tenure, limitation, or appointment, of any charitable gift, or otherwise howsoever; and the said justices shall limit a time for repairing the same, of which notice shall be given by the surveyor to the occupier liable to the burthen of such repairs, or to such other persons, as are chargeable with the same; and if such repairs shall not be made within the time so limited, such justices shall present such highways, bridges, &c. so out of repair, together with the person or persons liable thereto, at the next general quarter sessions, and the justices at such quarter sessions may direct the prosecution to be carried on at the general expence of such limit, and to be paid out of the general rates.

within a limited time;

and if not repaired within that time, may present them.

Sect. 24. And every justice of assize, justices of the counties palatine of *Chester, Lancaster, and Durham*, and of the great sessions in *Wales*, shall have authority by this statute, upon his or their own view, and every justice of the peace, either upon his own view, or upon information upon oath to him given by any surveyor, to make presentment, at their respective assizes or great sessions, or in the open general quarter sessions, of such respective limit of any highway, causeway, or bridge, not repaired, or of any other default or offence contrary to the intent of this statute; and all defects in the repair thereof shall be presented in such jurisdiction where they lie; and that no such presentment, nor any indictment, shall be removed by *certiorari*, or otherwise, out of such jurisdiction, till

Justices of assize and of the peace, &c. to make presentments of highways, &c. out of repair.

Such indictment or presentment be traversed, and judgement thereupon given, except where the obligation of repairing the said highways, &c. may come in question; and every such presentment shall be as good, and of the same force in the law, as if the same had been presented and found by the oaths of twelve men; and for every such default or offence so presented, the justices of assize, counties palatine, and great sessions, at their respective courts, and the justices of the peace, at their general quarter sessions, shall have authority to assess such fines as to them shall be thought meet: Saving to every person and persons, his, her, or their lawful traverse to the same presentment, as well with respect to the fact of nonrepair as to the duty or obligation of repairing the said highways, as they might have had upon any indictment of the same, presented and found by a grand jury; and the justices of the peace, at their quarter sessions, may direct the prosecutions upon such presentments as shall be made at their quarter sessions, to be carried on at the general expence of such limit, and to be paid out of the general rates.

Justices may order what highways shall be first repaired.

Sec. 25. And the said justices at any special sessions may, by writing under their hands and seals, order those highways, (not being turnpike road), which they think most want repair, to be first amended, and at what time, and how the same shall be amended.

Direction posts where

Sec. 26. And, where several highways meet, it is enacted, that the said justices, at some

some special sessions, shall issue their precept to the surveyor for any place, where several highways meet, and there is no proper direction post, or stone, already erected, requiring him to cause to be erected, in the most convenient place where such ways meet, a stone or post, with inscriptions thereon, in large legible letters, on each side thereof, containing the name or names of the next market town or towns, or other considerable places, to which the said highways respectively lead; and also at the several entrances to such parts of any highways as are subject to dangerous floods, graduated stones or posts, denoting the depth of water in the deepest part thereof, and likewise such direction posts or stones, as the said justices shall judge necessary, for the guiding of travellers in the safest tract through the said waters; and the surveyor shall be reimbursed the expences out of the monies which shall be received by him, pursuant to the directions of this act; and if any surveyors shall, by the space of three months after such precept to him delivered, neglect to cause such stones or posts to be fixed, he shall forfeit twenty shillings.

Sec. 27. And it is enacted, That it shall be lawful for every surveyor, to take and carry away so much of the rubbish or refuse stones, of any quarry, lying within the parish, &c. where he shall be surveyor, (except such as shall have been got by the surveyor of any turnpike road), without the licence of the owners of such quarries, as they shall judge necessary, for the amendment of the said

Materials,
where and in
what man-
ner to be
taken by
surveyors;

said highways, but not to dig stone in such quarry without leave of the owner; and also that it shall be lawful for every such surveyor, for the use aforesaid, in any waste land or common ground, river, or brook, within the parish, &c. for which he shall be surveyor, or within any other parish, township, or place, wherein gravel, sand, chalk, stone, or other materials are likely to be found, (if sufficient cannot be conveniently had within the parish, township, or place, where the same are to be employed, and sufficient shall be left for the use of the roads in such other parish, township, or place), to search for, dig, and carry away the same, so that the said surveyor doth not thereby interrupt the course of such river or brook, or damage any building, highway, or ford, nor dig or get the same out of any river or brook, within the distance of one hundred feet above or below any bridge, nor within the like distance of any dam or wear; and likewise to gather stones lying upon any lands within the parish, or place, where such highway shall be, for such purpose, and to carry away so much of the said materials as he shall think necessary to be employed in the amendment of the said highways, without making any satisfaction for the same; but satisfaction shall be made for all damages done to the lands of any person by carrying away the same, in the manner herein-after directed for getting and carrying materials in inclosed lands; but no such stones shall be gathered without the consent of the occupier of such lands, or a licence

without
making sa-
tisfaction;
but satisfac-
tion to be
made for da-
mages done
by carrying
them away.

licence from a justice of peace, after having summoned such occupier to come before him, and heard his reasons for refusing his consent.

Stat. 28. Provided always, that nothing in this act, relative to the getting of stones, shall extend to any quantity of land, (being private property), covered with stones thrown up by the sea, commonly called *beach*.

Not to extend to stones thrown up by the sea, called *Beach*.

Stat. 29. And it shall be lawful for every such surveyor, to search for, and dig, sand, gravel, chalk, stone, or other materials, if sufficient cannot conveniently be had within waste lands, common grounds, rivers, or brooks, in and through any of the several or inclosed lands of any person whomsoever, within the place, where the same shall be wanted; or by licence from two justices of the peace, at a special sessions, within any other parish, township, or place, adjoining the highway for which such materials shall be required, if such justices are of opinion, that sufficient materials cannot be conveniently had in the place, where such highways lie, or in the waste lands, or common grounds, rivers, or brooks, of such adjacent parish, or place, and that a sufficient quantity of materials will be left for the use of the parish, or place, where the same shall be, (such lands not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation), and to carry away so much of such materials as the surveyor shall think necessary for the amendment of the said highways; the said surveyor making such satisfaction

If sufficient materials cannot be found in waste lands, &c.

If the surveyor may take them from several or inclosed lands or grounds,

making satisfaction to the owners.

action for the damage to be done, as shall be agreed upon between him and the owner, occupier, or other person interested in such lands, in the presence and with the approbation of two or more substantial inhabitants of such parish, or place, and if they cannot agree, then such recompence shall be ascertained by order of one or more justices of the peace of the limit where such land shall lie.

And where, from the want of other materials, burnt clay may be substituted in the place thereof, it shall be lawful for the surveyor to dig clay in such places as he is hereby

authorized to dig chalk or gravel, and to dry the same upon the lands adjoining, and to burn the same upon any waste lands or common grounds, upon making such satisfaction for the damages within the several inclosed lands where such clay shall be placed or carried, as herein directed with regard to other materials: Provided, that when the owner of any such inclosed lands shall have occasion for any such materials lying within the same, for the repair of any highway, or other roads upon his estate, and shall give notice to such surveyor that he apprehends there will not be sufficient for those purposes, and also for the use of the public highways; then the surveyor shall not be permitted to dig or take such materials without the consent of such owner, or an order of two justices of the peace, after having summoned and heard the said owner or occupier, or his steward or agent; which justices are hereby authorized to permit or restrain such

Clay may be got and burnt into materials for repairing the highways.

such power, in such manner, as to them shall seem just.

Stat. 30. And whereas in some parishes, townships, or places, there may not be sufficient materials for the repair of the highways within the same, nor within the waste lands, common grounds, rivers, or brooks, or any other parish, or place, lying within a convenient distance from such highway, by reason whereof the surveyor may be forced to buy such materials, and to make recompence to the owner or occupier of inclosed lands for damage which may be done by getting and carrying thereof: And whereas no provision is made for raising a fund to reimburse the expences thereof, and such expences as the said surveyors may incur, by erecting guide-posts, or other posts or stones, and by making or repairing such trunks, tunnels, plats, bridges, or arches, as aforesaid, and by rendering satisfaction for damages done to lands by the making of new ditches or drains, nor for the salary to be paid by such parish, township, or place, to such surveyor as aforesaid; be it therefore enacted, that upon application by such surveyor to the justices of the peace, at their special sessions, and oath made of the sum of money which he hath *bona fide* laid out and expended, or which will be required for the purposes aforesaid, the said justices, or any two or more of them, shall, by warrant under their hands and seals, cause an equal assessment to be made for the purposes aforesaid, upon occupiers of lands, tenements, woods,

not exceeding 6 d. in the pound.

If pits or holes are made in getting materials, the surveyor shall cause them to be filled up.

woods, tithes, and hereditaments, within such parish, township, or place, where such money shall be so expended; and the money thereby raised shall be employed and accounted for, according to the direction of the said justices, for the purposes aforesaid; provided nevertheless, that no such assessment in any one year, shall exceed the rate of sixpence in the pound, of the yearly value of the lands, tenements, woods, tithes, and hereditaments, so to be assessed.

Sec. 31. If any surveyor, or person employed by him, shall, by reason of the digging, or getting any gravel, &c. for repairing any highways, make any hole in any such lands, rivers or brooks, as aforesaid, wherein such materials shall be found, such surveyor, person or persons, shall forthwith cause the same to be fenced off, and such fence supported while the said hole shall continue open, and shall, within three days after such hole shall be made, where no materials shall be found, cause the same to be filled up, levelled, and covered with the turf dug out of the same; and where any such materials shall be found, within fourteen days after having dug up sufficient, cause such hole to be filled up, sloped down, or fenced off, and so continued; and every surveyor shall, within twenty days after he shall be appointed, cause all the said holes which shall then be open, and not likely to be further useful, to be filled up or sloped down; and if they are likely to be further useful, he shall secure them by rails, or other fences, to prevent

prevent accidents; and if such surveyor, shall neglect to fill up, slope down, or fence off, such hole, as aforesaid, he shall forfeit ten shillings for every default: And if such surveyor shall neglect to fence off such hole, or to slope down the same, for the space of six days after he shall have received notice from any justice of the peace, or from the owner or occupier of such several ground, &c. or any person having right of common within such common or waste lands, and such neglect and notice shall be proved upon oath before one or more of the said justices of the peace, he shall forfeit not exceeding ten pounds, nor less than forty shillings, to be determined by such justice or justices, and to be laid out in the fencing off, filling up, or sloping down, such hole, and toward the repair of the roads where the offence shall be committed, as the said justice or justices shall direct; which forfeiture, if not forthwith paid, shall be levied as other forfeitures are herein-after directed.

or forfeit
10s. for
every ne-
glect;

and for every
neglect after
notice given,

a sum not
exceeding
10 l. nor
less than
40s.

Sec. 32. Provided always, That no materials, to be dug for the use of any other parish, or place, than that wherein the same are found, shall be carried from the place where they shall be so dug only between the first day of April, and the first day of November, or in the time of hard frost in the winter season.

Materials
dug for the
use of any
other parish
to be remov-
ed in sum-
mer or hard
frost.

Sec. 33. And that if any person shall dig materials for the highways, contrary to the direction of this act, whereby any bridge, mill, building, dam, highway, ford, mines, &c. by dig-

Persons da-
maging
mills, build-
ings, dams,
&c. by dig-
ing mate-

rials, forfeit
not exceed-
ing 5 l. nor
less than
20 s.

Statute-
duty,

in respect of
keeping a
team or oc-
cupying
lands, &c.

or tin works, may be damaged or endan-
gered, he shall forfeit, not exceeding five
pounds, nor less than twenty shillings, at the
discretion of the court or justices.

Sec. 34. The surveyor, together with the
inhabitants and occupiers of lands, &c. with-
in each parish, township, or place, shall, at
proper seasons in every year, use their endea-
vours for the repair of the highways, and
shall be chargeable thereunto, as followeth:
every person keeping a waggon, cart, wain,
plough, or tumbrel, and three or more horses
or beasts of draught used to draw the same,
shall be deemed to keep a team, draught, or
plough, and be liable to perform statute-duty
with the same, in the place where he resides,
and shall, six days in every year, (if so many
shall be found necessary), to be computed
from Michaelmas to Michaelmas, send on every
day, and at every place, to be appointed by
the surveyor, one wain, cart, or carriage,
furnished after the custom of the country,
with oxen, horses, or other cattle, and all
other necessaries, and also two able men;
which duty shall excuse every such person
from his duty in such parish, &c. in respect
of all lands, &c. not exceeding the annual
value of fifty pounds, which he shall occupy
therein: And every person keeping such
team, draught, or plough, and occupying
therein lands, &c. of the yearly value of fifty
pounds, beyond the said yearly value of fifty
pounds, in respect whereof such team-duty
shall be performed, and every such person
occupying lands, &c. of the yearly value of
fifty

How these
contributi-
ons in mo-
ney are to be
recovered.

one penny for every twenty shillings of the annual value of the lands, &c. which he shall occupy in any such parish, &c. above the annual value of fifty pounds, and less than one hundred pounds, and so for every twenty shillings that each progressive and intermediate annual value of twenty shillings, of the lands, &c. which he shall so occupy, shall fall short of the further increase of fifty pounds, in every parish, &c. where such lands, &c. shall lie, for every day's statute-day so to be required; which several sums shall be considered as compositions, and shall be paid to the surveyor, for the use of the highways, at the time such compositions are to be paid under the authority of this act, or within ten days after; or, in default of such payments, such money shall be levied by distress and sale, in such manner as the forfeitures for the neglect in performing the statute-duty are hereby authorised to be levied: Provided, that no person keeping such team, &c. and performing duty as aforesaid, in the parish, &c. where he resides, and not occupying lands, &c. within the same, of the yearly value of thirty pounds, shall be obliged to send more than one labourer with such team, &c.

The duty
required
from persons
who keep
no team,
but keep one
or two
horses used
to draw,

Sett. 35. Every person who shall not keep a team, draught, or plough, but shall keep one or more cart or carts, and one or two horses or beasts of draught only, shall be obliged to perform his statute-duty for the like number of days with such cart or carts, and horse or horses, or beasts of draught, and

and one labourer to attend each cart, or to pay for the lands, &c. which he shall occupy, according to the rate aforesaid, at the option of the surveyor; and every person who shall keep a coach, post-chaise, chair, or other wheel-carriage, and not keep a team, draught, or plough, nor occupy lands, &c. of the annual value of fifty pounds, in the parish, &c. where he shall reside, shall pay to the surveyor one shilling in respect of every such day's statute-duty, for every horse which he shall draw in any such carriage, or shall pay according to the value of the lands, &c. which he shall occupy, according to the rate aforesaid, at the option of the surveyor; and also every man inhabiting in any parish, &c. and being of the age of eighteen, and under sixty years, not chargeable in any of the respects aforesaid for lands, &c. of the yearly value of four pounds, and not being an apprentice or menial servant, nor having performed the said duty, or paid the composition for the same, in any other parish, &c. for that year, shall, by themselves, or one sufficient labourer, upon every of the said days, together with the said other labourers, work in the amendment of the said highways, as they shall be directed by such surveyor; and if the said teams, &c. or any of them, shall not be thought needful by the surveyor, then every such person who should have sent any such team, &c. according to the directions aforesaid, shall, according to the notice to be given, send for every one so spared, three shillings, or pay the surveyor four shillings or 4*s.* 6*d.* and in money.

or who keep
a coach,
post-chaise,
&c.

Personal la-
bour re-
quired from
inhabitants
or those who
occupy less
than 4*l.* per
annum.

Three men
to be sent in
lieu of a
team, if
required,

Turing
what hours,
and under
what regula-
tion, the
duty shall be
performed.

and sixpence in lieu thereof; and all such persons shall bring with them such shovels, spades, picks, mattocks, and other tools as are proper for such purposes; and such persons and carriages shall perform the work to which they shall be appointed for eight hours each, within such parish, &c. or in getting and carrying materials, to be employed in the repair of such highways. And if any person sending a team, shall not send a sufficient labourer besides the driver, (except as herein-before mentioned); or if any such labourer, or driver, or any other labourer, or the driver of any cart, required by this act to perform statute duty, shall refuse to work; or if any driver shall refuse to carry proper and sufficient loads; it shall be lawful for such surveyor to discharge every such team, cart, or labourer, and to recover from the owner the forfeiture which every such person would have incurred, in case no such team, cart, or labourer had been sent.

The survey-
or may call
for part of a
team where
he thinks it
necessary.

Sec. 36. It shall be lawful for the surveyor, where the employment for teams is of such sort that two horses will be sufficient for one cart, or where a stand cart with one horse shall be necessary, to call upon any person liable to send a team, draught, or plough, who keeps one or more cart or carts, and three or more horses, to send such cart or carts, horse or horses, to perform his statute-duty, as the surveyor shall find most convenient, and shall direct; and shall allow every such stand cart and one horse as half a team, and every cart and two horses as two-thirds

thirds of a team; and if a waggon shall be found necessary, he may require the duty to be performed with such waggon, by any person who keeps one; or the person liable to perform such duty shall forfeit such sum as the duty so required of him shall bear, in proportion to the forfeiture hereby inflicted for every neglect in performing duty with a team, &c.

Stat. 37. Every surveyor shall give to, or cause to be left at the usual place of abode of every person liable to perform such duty, four days notice at least of the time and place, upon which each of the said day's duty shall be required; and every person making default in performing such duty in the manner by this act directed, shall, for every such default in sending such wain, cart, or carriage, with such men as aforesaid, forfeit ten shillings; and for every default in sending every cart with one horse and one man, three shillings; and for not sending every cart with two horses and one man, five shillings: And every person making default in sending any such labourer, or in performing such labour in the manner directed by this act, or in paying such composition-money for the same, as herein mentioned, shall, forfeit one shilling and sixpence; which forfeitures shall be applied for the use of the highways: And if in any parish, &c. it shall not be necessary to call forth the whole duty in any year, it shall be abated in a just and equal proportion; and the surveyor shall, after default made in performance of such

What notice to be given for performing the duty.

Forfeitures for every default or neglect.

Application of the forfeitures.

The surveyor to call forth the duty fairly and equally.

H

duty

duty as aforesaid, proceed for the recovery of the penalties hereby inflicted, so that the same may be recovered before he makes up his accounts.

Persons may compound for statute-work.

Compositions fixed.

Stat. 38. Provided always, That any person liable to perform the said duty, may compound for the same, by paying to the surveyor, in the manner herein-after mentioned, such sums of money as the justices for the limit wherein such parish, &c. shall be, or the major part of them, at their said special sessions, to be held in the first week, after *Michaelmas* quarter sessions in every year, shall declare reasonable, not exceeding six shillings, nor less than three shillings, for each team, draught, or plough, for each day; and in default of their declaring the same, the sum of four shillings and sixpence in lieu of every such day's duty for each team, draught, or plough; and for every cart and one horse or beast of draught, two shillings; and for every cart with two horses or beasts of draught, three shillings, in lieu of every day's duty; and every inhabitant liable to perform such duty, and not chargeable in any other respect, as aforesaid, may compound for the same, by paying fourpence in lieu of every such day's duty.

Justices may direct the performance or labour in kind in any particular parish, &c.

Stat. 39. Provided always, That if it shall appear to the justices, at their special sessions, that there will be difficulty in procuring the necessary carriage, or a sufficient number of labourers for the repair of the highways, in any particular parish, &c. within their limits, without paying extravagant prices, it

shall

shall be lawful for such justices to order the team-duty hereby required or so much thereof as they shall think fit, to be performed in kind, except in respect of such teams as belong to persons who do not occupy lands, &c. of the annual value of thirty pounds within the parish, &c. and also to order the labourers, liable by this act to perform or compound for statute-duty, to perform six days labour upon such highways in kind, in case so many days duty shall be required, upon being paid the customary wages given to labourers in such parish, &c. deducting thereout four-pence for each day's duty so performed; Provided, that if part of such teams or labourers only are required, it shall be directed by the said order of the justices in some given proportion, as one half, third, or fourth part; and the surveyor shall, in that case, at a publick vestry for such parish, &c. put the names of all the persons liable to send such teams in one hat or box, and the names of all the persons liable to perform such labour into another hat or box, and some inhabitant then present shall draw out such number from each as shall be equal to the proportion so ordered by the said justices, and the persons so drawn shall perform such duty in kind for that year; and that if any such order shall be made in the subsequent year, the same method shall be observed, but the names drawn the preceding year shall not be put into such hat or box; which order of the said justices, so far as the same shall be extended, shall supersede the said power

Justices may mitigate where a person maintains his team partly from lands in another parish.

Surveyors to give notice of the time and place for compounding.

How the composition money shall be paid and employed.

or liberty of compounding, and shall be binding and effectual.

Sec. 40. Provided always, That if any person who shall keep a team, draught, or plough, not occupying lands, &c. to the value of thirty pounds *per annum*, in the parish, &c. where he shall reside, but shall in part maintain his horses and beasts of draught used in such team upon lands which he shall occupy in one or more adjacent parishes, it shall be lawful for the said justices, at some special sessions, to mitigate the duty or composition, to be performed or paid by such person, as they shall think just.

Sec. 41. Provided also, That the said surveyor shall, on some Sunday in November in every year, cause ten days notice to be given in the church or chapel of such parish, &c. and if there be no church or chapel, then at the most publick place there, and repeat the like notice in such church, chapel, or place, on the next succeeding Sunday, when and where the persons permitted under the authority of this act, and inclined to compound for the said duty, in manner aforesaid, may signify to such surveyor their intention to compound; and all and every person signifying the same, who shall then, or within one calendar month afterwards, pay to such surveyor the composition allowed by this act, shall be discharged from the performance of such duty, which composition-money shall be employed for the use of the highways; and that no composition shall be permitted, unless paid at the day, or within the time aforesaid; but

where

where the occupation of any lands, &c. shall be changed, or any new inhabitant shall come to reside in such parish, &c. after the time appointed for such composition, then the person occupying such lands, &c. or so residing in such parish, &c. shall be allowed to compound as aforesaid: Provided he pay the composition-money to the surveyor within fourteen days after he shall enter upon such lands, &c. and every occupier of any lands, &c. who intends to quit the possession within six calendar months from the time fixed for making such composition, may compound for half the duty hereby required, and the succeeding occupier may compound or perform the duty in kind for the other half; and if the surveyor shall receive from any person a composition for more duty than shall be required from the other inhabitants within the same parish, &c. for the same year, he shall repay such extraordinary composition-money to such person, so as to bring the duty to an equality amongst the inhabitants.

Stat. 42. Provided always, That in every parish, &c. where any person shall keep a draught or plough, and no carriage, he shall pay one shilling for every horse, or pair of oxen or neat cattle, used in such draught or plough, for every day's statute-duty, or pay according to the rate aforesaid for the lands, &c. which he shall occupy in such parish, &c. at the option of the surveyor.

Persons keeping a draught or plough, and no carriage, to pay for the horse, &c. drawing them.

Stat. 43. It shall be lawful for the inhabitants of every parish, &c. at some vestry,

Inhabitants may fix times when

the statute-
duty shall
not be called
forth, that

the statute-
duty shall
not be called
forth, that

or other publick meeting to be held pursuant to this act, to appoint three months in every year, within which no statute-duty shall be performed; viz. One month in the spring, to be called *the feed month*; one month in the summer, for the hay harvest; and one other month in the summer, for the corn harvest: Provided, that notice, in writing, be given of the times so appointed to the surveyor of such parish, &c. and also to the surveyor of every turnpike road lying within the same, within three days after every such meeting, and fourteen days before the beginning of each of such months.

Where the
surveyor re-
ceives com-
position mo-
ney due to
the turn-
pike roads,
he shall pay
it to the
treasurer,

for the use
of the turn-
pike road
within the
parish, &c.
where it is
collected.

Sec. 44. And whereas, by several acts of parliament concerning turnpike roads, part of the duty called *Statute-duty* may be directed to be performed on such roads, that the several persons liable thereto may have compounded for the same; be it therefore enacted, that in all such cases, the surveyor of the highways of the parish, &c. where such composition shall have been made, shall pay to the treasurer or surveyor of such turnpike roads a part of the composition-money so received, to be proportioned according to the number of days duty which such person was liable to perform on such turnpike road, which money shall be laid out on such part of the said turnpike road as lies within the parish, &c. from which it was received; and if such surveyor shall refuse to pay the same within twenty days after he shall have received it, upon demand made by such treasurer or surveyor, the same may be levied upon his goods and chattels.

Sec.

Stat. 45. If upon application of the surveyor for any parish, &c. to the justices for the limit wherein such parish, &c. lieth, at their general or quarter sessions, or at some special sessions for the highways, the said justices shall be fully satisfied, by proof upon oath, that the duty directed to be performed, and the money authorised to be collected, has been performed, applied, and expended, or that the common highways, bridges, causeways, streets, or pavements, belonging to such parish, &c. are so far out of order that they cannot be sufficiently repaired, &c. by the means herein-before prescribed, (notice being first given of such intended application at the church or chapel of such parish, &c. on some Sunday preceding such quarter or special sessions, or if the place be extraparochial, notice, in writing, being first given to some of the principal inhabitants in such extraparochial place, a week at least before such general or special sessions); then, an equal assessment upon all the occupiers of lands, &c. within any such parish, &c. shall be made by such person and persons, and allowed in such manner, as the said justices, shall direct; and the money thereby raised shall be employed according to the directions of the said justices, towards the repairing, paving, cleaning, &c. such highways, causeways, &c.

Stat. 46. Provided nevertheless, That the assessment herein last authorised, and that before authorised, for buying materials, making satisfaction for damages, erecting guide-posts,

If the duty and the money raised shall not be sufficient, the justices may order an assessment;

But such assessment, with the other, not to exceed 9d. in the pound.

Fines, penalties, and forfeitures, how to be levied and applied.

and paying the surveyor's salary, shall not in any one year, exceed nine pence in the pound of the yearly value of the lands, &c. so to be assessed.

Stat. 17. No fine, issue, penalty, or forfeiture, for not repairing the highways, or not appearing to any indictment or presentment for not repairing the same, shall hereafter be returned into the court of exchequer, or other court, but shall be levied by and paid into the hands of such person or persons residing in or near the parish, &c. where the road shall lie, as the court imposing such fines, issues, penalties, or forfeitures, shall order and direct, to be applied towards the repair of such highways; and the person so ordered to receive such fine shall apply, and account for the same, according to the direction of such court, or in default thereof, forfeit double the sum received; and if any fine, issue, penalty, or forfeiture, to be imposed on any such parish, &c. for not repairing the highways, or not appearing as aforesaid, shall hereafter be levied on any of the inhabitants of such parish, &c. then such inhabitant shall make his complaint to the justices, at their special sessions; and the said justices are hereby empowered by warrant under their hands and seals, to cause a rate to be made, for the reimbursing such inhabitant the monies so levied on him, which rate confirmed by any two justices, shall be collected by the surveyor of such parish, &c. and the surveyor shall, within one month after the confirming the rate aforesaid, collect,

collect, and pay such inhabitant the money so levied on him.

Stat. 48. The surveyor for every parish, &c. shall collect, or cause to be collected, the several assessments, forfeitures, penalties, sums of money, and compositions, directed and allowed by virtue of this act, and shall keep a book or books, in which he shall fairly enter a just and fair account of all such money as shall have come to his hands, &c. in respect of such parish, and to whom, and on what occasion, he shall have applied the same; and shall also enter in such book or books a list of all such sums of money as shall remain due from any person, in respect of the payments, compositions, &c. to be received by virtue of this act; and he shall also enter in the said book or books an account of all tools, materials, implements, &c. provided at the publick expence of such parish, &c. and shall produce such books, and the assessments made within that year, to the inhabitants of the said parish, &c. to which they belong, at a vestry or other publick meeting to be held for that purpose, within fifteen days before the special sessions so to be hold in the week next after Michaelmas quarter sessions; that the said accounts, assessments, and lists, may be inspected by the inhabitants of such parish, &c. and he shall, after the said books and assessments shall have been produced at such meeting, take the same to such justice for the limit wherein such parish, &c. doth lie, and at such time, as shall be agreed upon at such meeting, he

The surveyor or to keep books, and enter accounts of money paid and received;

and also of all money remaining due;

also of all tools, materials, &c.

and shall produce his accounts at a vestry meeting;

and afterwards before a justice of peace, who may allow them;

or they may
be further
examined at
the special
sessions.

books, ma-
terials,
tools, &c.
to be deli-
vered to the
succeeding
surveyor.

New survey-
or autho-
rised to col-
lect the ar-
rears, &c.

fore such special sessions, and then and there
verify such account, upon oath, if required;
and such justice may allow such account, if
he finds it just, or postpone it until such
special sessions, if he finds cause for so doing;
in which case it may be settled and allowed
at such special sessions, after the parts object-
ed to shall have been explained and verified
by proper evidence, to the satisfaction of the
justices; and in case any articles in such ac-
counts shall not be explained to the satisfacti-
on of such justices, they may disallow the
same; and whenever such accounts shall be
so settled and allowed, or disallowed, as afores-
aid, such books and assessments shall be
transmitted to the churchwarden or overseer
of the poor for such parish, &c. or, if the
place be extraparochial, then to some prin-
cipal inhabitant thereof, to be kept for the
use of such parish, township, or place; and
the said surveyor shall forthwith deliver a du-
plicate of such book and account, together
with all sums of money as shall remain in
his hands, and all tools, materials, imple-
ments, and other things, to the succeeding
surveyor for such parish, &c. if any new
surveyor shall be appointed, or retain the
same in his hands, and account for them in
his next account, if he shall be continued
surveyor in the succeeding year; and it shall
be lawful for the succeeding surveyor, to
recover, and receive, such money which
shall be due and owing, by all such ways and
means, as the preceding surveyor could or
ought to have done; and if he shall neglect
to

to provide such book or books, or to enter such accounts and lists therein, or to deliver the said book or books, and such duplicate thereof, and such assessments, tools, materials, implements, and other things, he shall forfeit not exceeding five pounds, nor less than forty shillings; and if he shall make default in accounting for the money remaining in his hands, he shall forfeit double the value of the money which shall be adjudged by the said justices to be in his hands; and if he shall die before such accounts and lists shall be made out, or such monies, books, assessments, tools, materials, and implements, shall be so delivered and paid, his executors or administrators shall make out, pay, and deliver the same, in like manner, and under the like penalty, as such surveyor; and every surveyor shall pay to the justices clerks, for the appointment and charge, one shilling; for the bond sixpence; and for the account so to be examined, and for the oath so to be administered, one shilling; and if any person shall receive any greater fee for the business aforesaid, he shall forfeit ten pounds.

The surveyor liable to forfeitures for neglect of duty.

If surveyor dies, his executors, &c. shall account in the same manner.

Fees to be paid to the justices clerks.

Stat. 49. In every parish, &c. where a sufficient quantity of stone, gravel, chalk, or other materials, cannot be provided and carried by the labourers and teams required by this act to perform statute-duty within such parish, &c. the surveyor shall contract for the getting and carrying thereof, (in the presence of the said assistant, if any such shall be appointed), at a meeting to be held for that purpose, of which ten days notice in

Surveyor may contract for carrying materials, at a public meeting.

If the surveyor has a share in any contract, or shall let to hire any team, or sell any timber, stones, &c. without licence, he shall forfeit 10*l.* and be incapable of being surveyor with a salary.

Surveyor, for every neglect of duty, shall forfeit 5*l.* when no particular penalty is imposed.

Persons enfeoffed with lands for the maintenance of causeways, &c. shall let them to farm at the most improved value.

writing shall be given, by fixing the same upon the door of the church or chapel of such parish, &c. or if there be no church or chapel, at the most publick place there; which notice shall specify the work to be done, and the time and place for letting thereof; and if any surveyor shall have any share, or interest, directly or indirectly, in such contract, or in any other contract or bargain for work or materials, on account of any of the highways, &c. or shall, upon his own account, let to hire any team, or sell any timber, or other materials, to be used in repairing such roads, &c. (unless a licence, in writing, be first obtained from some justice within that limit), he shall forfeit for every such offence, ten pounds, and be for ever after incapable of being employed as a surveyor with a salary.

Sect. 50. If any surveyor shall neglect his duty in any thing for which no particular penalty is imposed, he shall forfeit, for every such offence, not exceeding five pounds, nor less than ten shillings, at the discretion of the justices.

Sect. 51. Where any lands have been, or shall be given, for the maintenance of causeways, pavements, highways, and bridges, such persons who are, or shall be enfeoffed or trusted with such lands, shall let them to farm at the most improved yearly value, without fine; and the justices in their open sessions may inquire into the value of all such lands so given, or to be given, and order the improvement and employment of the rents and profits

profits thereof, according to the will of the donor of such lands, if they find that the persons intrusted have been negligent in the performance or trust, (except such lands have been given to any college or hall in either of the universities of this kingdom, which have visitors of their own;) any law, statute, usage, or custom, to the contrary notwithstanding.

Stat. 52. And forasmuch as several evil-disposed persons may wilfully pull up, cut down, and remove or damage posts, blocks, and great stones, fixed or to be fixed, on causeways, &c. and drive carriages upon banks and causeways, or against the sides thereof, and also dig or cast down the said banks, and such persons may break, damage, or throw down the stones, bricks, or wood, fixed upon bridges, and may pull down, destroy, or deface, any mile stone or post, graduated or direction post or stone, erected or to be erected upon any highway: for prevention thereof, every person, guilty of any such offence, shall, upon complaint made to any justice of the limit where the same shall be proved to be done, by the oath of any one credible witness, or upon view of the justice himself, forfeit any sum not exceeding five pounds, nor less than ten shillings; and in default of payment shall be committed to the house of correction to be whipped, and kept to hard labour, not exceeding one calendar month, nor less than seven days, at the discretion of such justice.

Stat. 53. The justices of the peace of all cities, corporations, boroughs, and other places,

Penalty on persons damaging causeways, direction posts, mile stones, bridges, &c.

Justices of Cities, &c. to put the

act into execution.

Justices of cities or boroughs not to allow salaries to surveyors,

except such as shall be agreed upon at the meeting of the householders.

Limitation of the number of horses for waggons and carts with different wheels.

places, are hereby required to put in execution every part of this act within their jurisdictions.

Sec. 54. Provided always, That nothing in this act contained shall authorise any justice of the peace, for any city, town corporate, or borough, to allow any salary to any surveyor to be appointed by any such justice, except such salary as shall be settled and agreed upon by two parts out of three of the persons assembled in the parish, township, or place, within such city, town corporate, or borough, for which such surveyor shall be appointed.

Sec. 55. No waggon, having the bottom of the fellies of the wheels of the breadth of nine inches, shall be drawn with more than eight horses; and no cart, having the bottom of the fellies of the wheels of the breadth of nine inches, shall be drawn with more than five horses; and no waggon, having the bottom of the fellies of the wheels of the breadth of six inches, and rolling on each side a surface of nine inches, shall be drawn with more than seven horses; and no such waggon rolling a surface of six inches only, shall be drawn with more than six horses; and no cart, having the bottom of the fellies of the wheels of the breadth of six inches, shall be drawn with more than four horses; and no waggon having the bottom of the fellies of the wheels of less breadth than six inches, shall be drawn with more than five horses; and no cart having the bottom of the fellies of the wheels of less breadth than six inches, shall

shall be drawn with more than three horses, under the pains and penalties herein-after mentioned; (that is to say) that the owner of such waggon or cart shall forfeit five pounds, and the driver ten shillings, for every horse or beast so drawing above the number limited, to the sole use and benefit of the informer; but carriages moving upon wheels or rollers, of the breadth of sixteen inches on each side thereof, with flat surfaces, are hereby allowed to be drawn with any number of horses, or other cattle.

Stat. 56. Provided always, That no prosecution shall be commenced before a justice, unless such information be laid within three days after the offence committed; and that no action shall be commenced for any such offence, unless within one calendar month after the offence committed; and that neither such information or action shall be laid or commenced, unless notice shall be given by the informer to the driver of such carriage, on the day upon which the offence shall be committed, of an intention to complain of such offence; and if it shall appear to the justice before whom such complaint shall be made, that the offender lives so remote as to make it inconvenient to summon him to appear before such justice, he may dismiss the complaint, and leave the informer to his remedy by action at law.

Stat. 57. Provided always, That it shall be lawful for the justices, at their respective general quarter sessions, to be held in the week after Michaelmas, to licence, in such manner

The owner forfeits 5*l*. and the driver 10*s*. for every horse above the number.

Sixteen inch rollers not restrained in the number.

Prosecutions for such additional number of horses, how to be carried on.

Justices of peace, at their Michaelmas quarter sessions, may

licence an
increase of
horses.

manner as they shall think fit, an increase of the number of horses to be drawn in carriages up any steep hill, or on any road not turnpike, within their respective jurisdictions, if they shall find any additional number of horses necessary; and at any *Michaelmas* quarter sessions, to revoke, alter, or vary the same, as they shall think fit.

Justices may
stop pro-
ceedings for
forfeiture,
when, from
ice or deep
snow, more
horses were
necessary.

Stat. 58. Provided always, That if it shall appear upon the oaths of credible witnesses, to the satisfaction of any justice, or of any court of justice, that any waggon, cart, or carriage, could not, by reason of deep snow or ice, be drawn by the number of horses, &c. then such justice or court shall stop all proceedings before them for the recovery of any penalty incurred by drawing too many horses, &c. any thing herein contained to the contrary notwithstanding: provided also, that the regulations before mentioned, concerning the number of horses, shall not be construed to extend to carts, waggons, or other carriages, employed only in carrying any one stone, block of marble, cable rope, or piece of metal, or piece of timber, or to such ammunition or artillery as shall be for his Majesty's service; and that two oxen or horned cattle shall, for all the purposes of this act, be considered as one horse.

Carriages
excepted out
of this act.

Two oxen
to be con-
sidered as one
horse.

The owner's
name, &c.
to be paint-
ed on all
waggons and
carts, and
also on
coaches, post
chaises, &c.
let to hire.

Stat. 59. For the better discovery of offenders, the owner of every waggon, wain, or cart, and also of every coach, post chaise, or other carriage let to hire, shall paint, or cause to be painted, upon some conspicuous part of his waggon, wain, or cart, and upon the pannels

pannels of the doors of all such coaches, post chaises, or other carriages, before the same shall be used upon any publick highway; his or her christian and surname, and the place of his or her abode, in large legible letters, and continue the same thereupon so long as such waggon, &c. shall be used upon any such highway; and the owner of every common stage waggon or cart, employed as travelling stages from town to town, shall, over and above his christian and surname, paint, or cause to be painted, on the part, and in the manner aforesaid, the following words, *common stage waggon, or cart*, as it may be; and every person using any such carriage as aforesaid upon any highway, without the names and descriptions painted thereon as aforesaid, or who shall paint, or cause to be painted, any false or fictitious name or place of abode, on such waggon, wain, cart, coach, post chaise, or other carriage, shall forfeit not exceeding five pounds, nor less than twenty shillings.

Sec. 60. And whereas many accidents happen by the negligence or wilful misbehaviour of persons driving carriages; be it therefore enacted, That if the driver of any cart, ear, drag, or waggon, shall ride upon any such carriage in any street or highway, not having some other person on foot, or on horseback, to guide the same, (such carriages conducted by some person holding the reins of the horse or horses drawing the same excepted;) or if the driver of any carriage on any part of any street or highway shall, by negligence, or wil-

Drivers of carriages punishable for misbehaviour, in order to prevent accidents.

ful

ful misbehaviour, cause any hurt or damage to any person or carriage passing or being upon such street or highway, or shall quit the highway, and go on the other side the hedge or fence inclosing the same; or wilfully be at such distance from such carriage, whilst it shall be passing upon such highway, that he cannot have the government of the cattle drawing the same; or shall, by negligence or wilful misbehaviour, prevent, hinder, or interrupt the free passage of any other carriage, or of his Majesty's subjects, on the said highways; or if the driver of any empty or unloaded waggon, cart, or other carriage, shall refuse to turn aside and make way for any coach, chariot, chaise, loaded waggon, cart, or other loaded carriage; or if any person shall drive any such coach, post chaise, or other carriage, let for hire, or waggon, wain, or cart, not having the owner's name, as before required, painted thereon, or shall refuse to discover the true christian and surname of the owner of such carriages; every such driver being convicted of any such offence, either by his own confession, the view of a justice, or by the oath of one or more credible witnesses, before any justice of the peace of the limit, shall forfeit not exceeding ten shillings, if such driver shall not be the owner of such carriage; and if the offender be the owner, then not exceeding twenty shillings: and in either case, shall, in default of payment, be committed to the house of correction, not exceeding one month, unless the same shall be sooner paid; and every such

such driver, offending in either case, may, with or without any warrant, be apprehended by any person who shall see such offence committed, and shall be immediately conveyed to a constable or other peace officer, to be conveyed before some justice, to be dealt with according to law: and if any such driver, in any of the cases aforesaid, shall refuse to discover his name, it shall be lawful for the justice before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the house of correction, not exceeding three months, or to proceed against him for the penalty aforesaid, by a description of his person and the offence, expressing in such proceedings that he refused to discover his name.

SECT. 61. It shall be lawful for any two or more justices within their respective limits, whenever they shall judge proper, to hold any special sessions, besides that herein-before directed, for executing the purposes of this act; and to adjourn the same, as they shall think fit, causing notice to be given of the time and place of holding such special sessions, and of the adjournments thereof, to the several justices residing within such limits, by the high constable, or other proper officer.

SECT. 62. To prevent obstructions, if any person collecting any tolls payable for passing over any publick bridge with carriages or cattle, shall keep any victualling-house, alehouse, or other place of publick entertainment, or shall sell any wine, beer, ale, cyder, spirituous liquors, or other strong li-

Justices may hold special sessions whenever they think fit,

upon giving notice to the other justices.

Alehouses, &c. not to be kept on bridges where tolls are taken.

quors,

quors, by retail, being lawfully convicted by the oath of one or more credible witnesses, or by his own confession, he shall forfeit five pounds.

Penalty for
incroaching
on high-
ways.

SECT. 63. If any person shall incroach, by making, or causing to be made, any hedge, ditch, or other fence, on any highway, not being turnpike road, within the distance of fifteen feet from the centre thereof, or shall plough, harrow, or break up the soil of any land or ground, or in ploughing or harrowing the adjacent lands, shall turn his plough in or upon any land or ground within the distance of fifteen feet from the middle or centre of any highway, where the breadth of such highway is formed and marked, or described with certainty, and does not exceed in breadth thirty feet, every person so offending shall forfeit forty shillings, to such person who shall make information of the same; and the surveyor shall cause such hedge, ditch, or fence, to be taken down, or filled up, at the expence of the person to whom the same shall belong: and any justice or justices of the peace of the limit shall, upon proof made upon oath, levy as well the expences of taking down such hedges as aforesaid, as the several penalties hereby imposed, by distress and sale of the offender's goods and chattels.

Incroachment to be
taken down
by the surveyor.

Court may
award costs
to the pro-
secutor or
defendant
upon an in-
dictment or
presentment.

SECT. 64. The court before whom any indictment or presentment shall be tried for not repairing highways, may award costs to the prosecutor, to be paid by the person so indicted or presented, if it shall appear that the defence made to such indictment, &c. was frivolous;

ious; or award costs to the person indicted or presented, to be paid by the prosecutor, if it shall appear that such prosecution was vexatious.

Sec. 65. If the inhabitants of any parish, &c. shall agree, at a vestry or publick meeting, to prosecute any person by indictment for not repairing any highway, or for committing any nuisance, or shall agree at such vestry meeting to defend any indictment or presentment preferred against them, the surveyor of such parish, &c. may charge in his account the reasonable expences incurred in carrying on or defending such prosecutions; which expences shall be paid by such parish, &c. out of the fines, forfeitures, compositions, payments, and assessments, to be collected by virtue of this act.

Expences for carrying on or defending prosecutions, agreed upon at a vestry meeting, how to be paid.

Sec. 66. Where a vestry or publick meeting of the inhabitants of any parish, &c. is directed by this act, publick notice shall be given of the time and place of holding the said meeting, at the church or chapel of such parish, &c. on the *Sunday* next preceding such meeting, and also notice in writing, specifying the purpose of such meeting, fixed at the same time upon the door of such church or chapel, and it shall not be held till three days at least after such notice given; and if there be no church or chapel, notice of such meeting shall be given in writing, and put up at the most publick place therein, three days at least before such meeting.

The notice required for holding vestries or publick meetings.

Sec. 67. If any person shall refuse to pay the sums assessed upon him, in pursu-

Sums assessed may be levied by

distress and
sale of the
offenders
goods.

ance of this act, within ten days after demand, the same may be levied by the surveyor, or any other person authorised, by warrant under the hand and seal of one justice, having jurisdiction therein, by distress and sale of the goods and chattels of the person so refusing, rendering the overplus to the owner thereof, the charges of making such distress and sale being first deducted; and in default of such distress, such justice may commit the person so refusing to the common gaol, until he shall have paid the sum so assessed, and the charges occasioned by such refusal.

Surveyor
may be a
competent
witness.

Sect. 68. The surveyor of any parish, &c. shall be deemed, in all cases, a competent witness, in all matters relative to the execution of this act, though part of his salary may arise from forfeitures, &c.

Forms of
proceedings.

Sect. 69. No objection shall be made, or advantage taken, for want of form in any such proceedings relative to the several matters, by any person or persons whomsoever.

Printed ab-
stract given
to surveyors.

Sect. 70. That the contents of this act may be more generally known, the justices within their respective limits, shall, at every special sessions to be held in the week next after the *Michaelmas* general quarter sessions, procure and deliver a printed abstract of the most material parts of this act to every surveyor, to be then appointed, as the charge hereby directed to be given; and shall also, at their said special sessions, to be held in the year one thousand seven hundred and seventy-three, deliver to every of the said surveyors, one of the said printed

printed abstracts of this act, for the use of the parish, &c. for which he shall be appointed; which last-mentioned abstract the said surveyors are hereby ordered to fix on the church or chapel door, or other publick place, within their liberties, on the next Sunday after they shall receive it; and they shall severally pay to the said justices clerks sixpence for each of the said last-mentioned printed abstracts.

One to be
fixed on the
church
door.

Sect. 71. If any person shall resist any person employed in the due execution of this act, or make any rescue of the cattle or other goods distrained by virtue of this act; or if any constable, headborough, or tythingman, shall refuse to obey any warrant or precept granted by any justice pursuant to the directions of this act; and being convicted thereof by a justice of the peace, he shall forfeit not exceeding ten pounds, nor less than forty shillings, at the discretion of the justice; and if he do not forthwith pay the said forfeiture, after such conviction, such justice may commit such person to the common gaol, or house of correction, for any time not exceeding three months, or till the forfeiture shall be paid.

Persons re-
sisting the
execution of
this act,
or constables
refusing to
obey the
warrant, to
forfeit not
exceeding
10 l. nor
less than
40 l.

Sect. 72. All penalties and forfeitures by this act imposed, and all costs and charges to be allowed by this act, (the manner of levying and recovering of which is not hereby otherwise particularly directed,) shall be levied by distress and sale of the goods, &c. by warrant under the hand and seal of some justice, rendering the overplus of such distress

Forfeitures,
costs, &c.
may be le-
vied by distress
and sale.

(if

In what
manner to
be applied,

How to pro-
ceed when
the offender
lives within
another ju-
risdiction.

(if any be) to the party, after deducting the charges of making the same; which warrant such justice is hereby empowered to grant, upon conviction of the offender, by confession, or upon the oath of one or more credible witnesses, or upon order made as aforesaid; and the penalties and forfeitures shall be paid, one half to the informer, and the other to the surveyor; but if the surveyor shall be the informer, the whole shall be employed towards the repair of such highway: and if distress cannot be found, such justice may commit such offender, or person liable to pay the same, to the common gaol, or house of correction, not exceeding three months, unless the said penalty, forfeiture, costs, and charges shall be sooner paid; and if such offender or person shall live out of the jurisdiction of the justice hereby authorised to grant such warrant, it shall and may be lawful for any justice of the limit wherein such person shall inhabit, upon a true copy of the conviction whereby such forfeiture or penalty was incurred, and of the order for the payment of such costs and charges, produced and proved upon oath, by warrant under his hand and seal, to cause the penalty mentioned in such conviction, and the costs and charges mentioned in such order, to be levied by distress and sale of the goods, &c. of such offender or person; and if no sufficient distress can be had, to commit such offender or person to the common gaol, or house of conviction, for the time aforesaid.

Stat.

Sec. 73. Provided no warrant of distress, unless otherwise directed by this act, shall be issued for levying any penalty, &c. until six days after, the offender shall have been convicted, and an order served upon him for payment thereof.

Warrant of distress when to be issued.

Sec. 74. Provided also, That every prosecutor or informer may sue for any forfeiture or penalty imposed by this act, amounting to forty shillings or upwards, (the manner of recovery thereof not being particularly directed by this act,) either as herein-before directed, or by action at law, to be brought in any of his Majesty's courts of record, in manner following; (that is to say,) by action of debt, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of *being forfeited* by an act, passed in the thirteenth year of the reign of his present Majesty, intituled, *An act to explain, amend, and reduce into one act of parliament, &c.* and if the plaintiff recovers in any such actions, he shall have double costs.

The prosecutor has his option to proceed by information before a justice, or by action at law, if 40s.

Sec. 75. Provided, That ten days notice, in writing, be given to the party offending previous to the commencement of such action; and that the same be commenced within one calendar month after the offence committed.

Within what time actions are to be commenced.

Sec. 76. Provided also, That no conviction shall be made by virtue of this act, unless upon confession of the party accused, or the oath of one or more credible witnesses, or upon the view of a justice, in the cases before mentioned; and that any inhabitant of

Convictions how to be made.

Inhabitant
of a parish a
good wit-
ness.

Justices may
administer
oaths.

Satisfaction
recoverable
for special
damage; but
distress
not unlaw-
ful for want
of form.

Plaintiffs
not to reco-
ver for irre-
gularity, if
tender of a-
mends be

any parish, &c. in which any offence shall be committed contrary to this act, shall be deemed a competent witness, though an inhabitant of such parish, &c.

Sec. 77. And any justice of the peace may administer an oath to any witness, or other person, for the better discovery and execution of the several matters herein-before directed.

Sec. 78. Where any distress shall be made for any sum of money to be levied by virtue of this act, it shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any default or want of form in any proceedings, nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio*, on account of any irregularity, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case.

Sec. 79. Provided always, That no plaintiff shall recover in any action for any irregularity, &c. if tender of sufficient amends shall be made on the behalf of the party who shall have committed any such irregularity, &c. before such action brought; and in case no such tender shall have been made, it shall be lawful for the defendant in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he shall see fit, whereupon such proceedings or orders, and judgment, shall be had, made, and given, in and by such court, as in other actions.

Highways.

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actions where the defendant is allowed to pay money into court.

Sec. 80. If any person shall think himself aggrieved by any person, in the execution of the powers given by this act, for which no particular method of relief hath been appointed, he may appeal to the justices, at any general quarter sessions, such appellant giving notice in writing, of his intention to bring such appeal, and of the matter thereof, to the justice, or other person against whom such complaint shall be made, within six days after the cause of such complaint arose, and within four days after such notice, entering into recognizance before some justice within such limit, with one sufficient surety, conditioned to try such appeal, and abide the order of the justices at such quarter session; and every justice, and other person, having received notice of such appeal, as aforesaid, shall return all proceedings whatsoever had before them, touching the matter of such appeal, to the said justices, at their general quarter sessions, on pain of forfeiting five pounds for every such neglect; and the said justices at such session, upon due proof of such notice being given, and of the entering into such recognizance, shall finally determine the matters of such appeal in a summary way; and the determination of such quarter session shall be final, and no proceedings to be had in pursuance of this act shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ or process, (except as herein-before mentioned,) into any of his Majesty's

Appeal may be made to quarter sessions by the person aggrieved.

Proceedings not to be quashed for want of form, nor removed by *certiorari*.

sty's courts of record at *Westminster*, any law or statute to the contrary notwithstanding: Provided; that no such appeal shall be made unless the person convicted shall, at the time of such conviction, if he shall be then present, if not, within six days after, give notice of his intention to appeal, and at the same time enter into recognizance with sufficient sureties to pay such penalty, if such conviction shall be affirmed; and upon his giving such security, the further proceeding for such penalty shall be suspended until such appeal shall be heard.

Limitation
of actions.

-General
issue.

Sect. 81. If any action shall be commenced against any person for any thing done in pursuance of this act, such action shall be commenced within three calendar months after the fact committed; and shall be brought within the county where the fact was committed; and the defendant may plead the general issue, and give this act, and the special matter, in evidence, at any trial to be had thereupon, and that the same was done in pursuance of this present act: And if the same shall appear to have been so done, or if any such action shall be brought after the time limited, or in any other place than as aforementioned, the jury shall find for the defendant; or if the plaintiff shall become nonsuit, or discontinue his action, after the defendant shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff, the defendant may recover

Treble costs, and have the like remedy for recovery

recovery thereof, as any defendant hath in any other cases by law.

Sec. 82. This act shall commence and take place, with respect to the assembling of the householders and others, and the making and delivering of lists of persons qualified to serve the office of surveyor, and the giving notices to the persons contained in such lists, upon the twenty-first day of *September*, 1773; and, with respect to all the other matters, on the eleventh day of *October*, 1773.

When the
act com-
mences.

Sec. 83. And that there may be only one law subsisting for the several purposes aforesaid, from and after the tenth day of *October*, 1773, an act, passed in the seventh year of the reign of his present Majesty, intituled, *An act to explain, amend, and reduce into one act of parliament, the several statutes, now in being for the amendment and preservation of the publick highways of this kingdom, and for other purposes therein mentioned*, (except so much thereof as repeals the several acts, and parts of acts, therein mentioned, which are not revived by an act, passed in the eighth year of the reign of his present Majesty, intituled, *An act to explain, amend, and render more effectual an act, passed in the seventh year of his present Majesty's reign, intituled, "An act to explain, amend, and reduce into one act of parliament, the several statutes now in being for the amendment and preservation of the publick highways of this kingdom, and for other purposes therein mentioned,"*) shall be, and the same is hereby repealed.

Act 7 Geo.
III. repealed

Sec. 84. Provided nevertheless, That the several surveyors appointed by virtue of the act, passed

Surveyors
appointed
under 7 Geo.

III. to pass
their ac-
counts at
special ses-
sions after
Michaelmas
next.

passed in the 7th year of the reign of his present Majesty, shall produce such books and lists, and pass their accounts before the justices at their respective special sessions, to be holden within their respective limits, in the week next after the *Michaelmas* quarter sessions, in the year 1773, and pay the balances thereof, in such manner as they ought to have done at the special sessions, which was by the said act to have been held on the first *Monday* in *October*, or within fifteen days after; and if the justices shall appoint any surveyor or surveyors under the authority of the said act, such appointment shall be void.

Exceptions
relative to
Bristol;

Stat. 85. Provided always, That nothing in this act contained shall extend to the city of *Bristol*; but that the several acts which have been passed previous to this act, relative to surveyors of the highways, and to cleansing, paving, lighting, and regulating the streets and other places within the said city, shall remain in full force.

and *Saint*
Mary Mat-
felon, &c.

Provided also, That nothing in this act shall extend to the parish of *Saint Mary Mat-felon*, otherwise *Whitechapel*, and *Saint John of Wapping*, in the county of *Middlesex*.

Powers of
commission-
ers of sewers
not abrogat-
ed.

Provided always, That nothing in this act contained shall extend to alter, restrain, or abridge, the powers given to the commissioners of sewers by any act whatsoever, or to vary any of the provisions thereby made, or provided; any thing herein contained to the contrary thereof in any-wise notwithstanding.

Concerning

Highways. (Turnpike.)

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Concerning Turnpike Roads.

Stat. 7 Geo. 3. cap. 40. [intituled], "An act to explain, amend, and reduce into one act of parliament, the general laws now in being for regulating the turnpike roads of this kingdom; and for other purposes therein mentioned."

Sec. 1. "WHEREAS the laws for the general regulation of the turnpike roads are very numerous, and in some respects ineffectual; and whereas the good purposes thereby intended might be better effected, if the said laws were intirely repealed, and one law made for carrying such purposes into execution: wherefore, Be it enacted, That it shall be lawful for all commissioners and trustees appointed by any act of parliament for the repair of any turnpike road in *England*, or any five or more of them, at a general meeting, if they shall think proper, at any gate or bar, as they have erected, or upon any part of the road within their respective jurisdictions, to cause to be built any crane, machine, or engine, for the weighing of carts, waggons, or other carriages, for the conveying of any goods; and by writing signed by them, or five of them, to order all such carriages, which shall pass through any such gate or bar, to be weighed, together with the loading; and for them, or for any person impowered by them, to take, over and above the toll, twenty shillings for every hundred weight, which every waggon

Five or more trustees for turnpike roads, impowered to erect weighing engines.

or four wheeled carriage (not having the sole or bottom of the fellies of the wheels nine inches broad) together with the loading, shall weigh above sixtyhundred; twenty shillings for every hundred weight which every waggon or four wheeled carriage, having the sole of the fellies nine inches broad, together with the loading thereof, shall weigh above six tons; and twenty shillings for every hundred weight which every cart or two wheeled carriage, having the sole of the fellies of the wheels nine inches broad, together with the loading, shall weigh above three tons; which said additional toll, shall be levied and recovered of the offender in any of the cases aforesaid, or his goods or chattels, who shall refuse or neglect to pay the same; and the money arising therefrom, shall be applied to the repair of the turnpike road.

Sett. 2. " The regulations before mentioned shall not extend to any waggons or wains having the axletrees of such different lengths, that the distance from wheel to wheel of the narrower pair of the said wheels be not more than four feet two inches, to be measured at the ground; and that the distance from wheel to wheel of the other pair thereof be such, that the fore and hind wheels of such waggons and wains shall roll only one single surface or path of sixteen inches wide at the least, on each side of the said waggons or wains, and having the fellies thereof nine inches broad from side to side at the bottom or sole thereof; but the same shall pass upon any turnpike road, and through any

any toll-gate within one hundred miles from London, upon paying only so much of the tolls as shall not exceed one half of the full toll paid for all waggons or wains having the fellies of the wheels of the breadth of nine inches from side to side, or for the horses or beasts of draught drawing the same, and not rolling a surface of sixteen inches, in the manner herein before set forth.

Sect. 3. The regulations before mentioned concerning the wheels of carriages, shall not extend to any carts, waggons, &c. employed only in husbandry.

Sect. 4. "The trustees appointed by any act made for the repairing any turnpike-road, or any two of them, are hereby authorized and required, by writing under their hands, to order the fellies of all waggons, wains, carts, or other carriages, which are or ought to be of the breadth herein before directed, to be measured at any weighing-engine, or at any turnpike or toll gate.

Sect. 5. "The trustees of any turnpike-road may make composition for tolls for any waggon, wain, cart, or carriage, unless such waggons, &c. have the fellies of the wheels of the breadth of nine inches.

No composition for narrow wheeled carriages.

Sect. 6. "If any person shall unload any goods from any carriage (except such as are herein before excepted) at or before it shall come to any turnpike gate or weighing engine; or shall load upon such carriage, after it shall have passed any such turnpike gate or weighing engine, any goods, taken from any horse, cart, or other carriage, in order to

avoid the payment of the said duties of twenty shillings per hundred; every person so offending, shall forfeit five pounds, to be levied upon his goods and chattels; and every driver of such carriage so offending, shall be committed to the house of correction for one month: and in case any receiver of the rolls at any gate or turnpike where any crane, machine, or engine for weighing of carriages shall be erected, shall permit any cart, waggon, or carriage, being laden, to pass through any such gate without weighing the same, such receiver shall be immediately discharged, and rendered incapable of holding any office under the said trustees, or forfeit five pounds, at the option of such trustees.

Regulations
of the
wheels of
waggon,
&c. travel-
ling above
20 miles
from Lon-
don.

Sec. 7. "No waggon, wain or cart, shall pass along any turnpike-road, being above twenty miles from *London*, having the fellies of the wheels thereof of the breadth of nine inches at the bottom, unless they shall be constructed in such manner, that no pair of wheels, (except such as shall roll a surface of sixteen inches), shall be wider than four feet six inches from inside to inside, to be measured on the ground; and that the distance from the center of the fore wheel to the center of the hind wheel of any such waggon or four wheel carriage (not being used for the carriage of timber only), be not above nine feet, to be measured from the center of the axletrees at the ends thereof; on pain of the owner of every such waggon, wain or cart, forfeiting five pounds for every offence; and the surveyor,

surveyor, or gate-keeper of any turnpike-road, are hereby authorized and required, to measure every such waggon, wain or cart; and if the master or driver shall hinder such surveyor or gate-keeper to measure such waggon, &c. he shall forfeit five pounds; and it shall not be lawful for any such waggon, &c. not permitted to be measured as aforesaid, to pass along any turnpike-road.

Stat. 8. "No waggon, or other four wheeled carriage, having the sole of the fellies of the wheels of the breadth of nine inches, shall pass on any turnpike-road with more than eight horses; nor any cart, or other two wheeled carriage, having wheels of the breadth aforesaid, shall pass upon any turnpike-road with more than five horses; the horses in such carriages to be drawn in pairs, except where there is an odd horse, and where the number of horses shall not exceed four: and also that no waggon, or other four-wheeled carriage, having the fellies of the wheels of less breadth than nine inches, shall pass on any turnpike-road with more than six horses; or six oxen or neat cattle in pairs, and two horses; or eight oxen or neat cattle in pairs and one horse: and that no cart or other two wheeled carriage, having the fellies of the wheels of less breadth than nine inches shall be drawn on any turnpike-road with more than three horses; or six oxen or neat cattle in pairs, and one horse; or four oxen or neat cattle in pairs, and two horses; on pain of the owner of such waggon, or carriage, forfeiting twenty shillings.

No broad wheeled waggon to be drawn with more than eight horses; two wheeled carriages with more than five; nor narrow four wheeled carriages with more than four.

and every horse or other beast of draught above the numbers herein before limited, to any person who shall seize or sue for the same; except as herein after mentioned.

Taking off
any horse to
avoid paying
toll, to for-
feit 5*l*.

Sec. 9. "If any person shall take off any horse, or other beast, from any waggon or other carriage, or shall alter, at or before the same shall come to any of the said gates, with intent to avoid any toll, or penalty, for drawing with a greater number of horses or beasts of draught, or in any other manner than hereby allowed; every person so offending, shall forfeit five pounds.

Sec. 10. "Every person who shall drive any waggon, &c. upon any turnpike-road, with more horses or beasts than such carriage shall on the same day have passed with through any turnpike-gate, shall be deemed to have taken off the said horses or beasts with intent to avoid paying the toll.

Sec. 11. "If it shall appear to the trustees or any nine of them, at any public meeting, that it is impracticable for any waggon, &c. with the weights to the same respectively allowed, to be drawn up any hill, by the number of horses herein allowed, such trustees, or nine of them, may allow such number of horses as they shall judge necessary, not exceeding ten for such nine inch wheels, and not exceeding six for such wheels of less breadth than nine inches, to be used in such waggon, &c. the length of such hill to be specified in such order of allowance, and the termination at each end to be marked by a post or stone.

Sec.

Sec. 12. " If it shall appear upon the oaths of credible witnesses, that any waggon, &c. could not, by reason of deep snow or ice, be drawn with respective weights, and by the number of horses hereby allowed; then any justice or commissioner, or trustee, may and they are hereby respectively required to stop all proceedings before them for the recovery of any penalty.

Sec. 13. " It shall not be lawful for any narrow wheeled waggon or four wheeled carriage, having the sole of the fellies of the wheels of less breadth than nine inches, to pass upon any turnpike-road, if the same be drawn by horses in pairs, (except waggons and four wheeled carriages loaded with fish, rabbits, poultry, calves alive or slaughtered, or lambs only.)

Narrow wheeled waggons not drawn by horses in pairs.

Sec. 14. " No waggon, cart or other carriage, travelling upon the turnpike-roads, shall be drawn out of the same into any of the roads adjacent, to avoid paying the tolls; upon pain of forfeiting any one of the horses drawing the same, not being the thill or shaft horse, with all his geers and accoutrements, to the person who shall seize the same.

Sec. 15. " If any toll-gatherer shall permit any waggon, &c. to be drawn upon any turnpike-road within the view or with the knowledge of such toll-gatherer, or to pass through any toll-gate with any greater number of horses, oxen or neat cattle, or with any carriage constructed or drawn in any other manner than is before directed, and shall not, within the space of one week, proceed

Toll-keeper permitting forfeits 40s.

Highways. (Turnpike.)

proceed for the recovery of the forfeiture hereby inflicted for every such offence, he shall forfeit for every such offence, forty shillings.

Sec. 16. "If any person, upon any turnpike-road, drive any waggon, &c. having wheels of a construction not authorized by this act, or drawn by more than the number of horses, &c. then any constable, tythingman, surveyor, or any other person may apprehend and take such person so driving, before a justice; and upon conviction, before such justice or justices, every such person shall forfeit five pounds.

Dragirons to be flat at the sole and at the breadth of the fellies, on forfeiture of 40 s.

Sec. 17. "Where any drag iron or other instrument shall be affixed under the sole of the wheel or wheels of any waggon, &c. to make the passage more secure down steep hills; such drag iron shall be flat at the bottom or sole thereof, and not of less breadth than the fellies of the wheels under which the same shall be so affixed; on pain of the owner forfeiting forty shillings.

Owner's real name, &c. to be painted on each waggon and cart.

Sec. 18. "Every owner of any waggon, wain, cart or carriage, shall paint, or cause to be painted, in large and legible characters, upon the tilts of every such waggon, &c. which has a tilt, and upon the most conspicuous part of such waggon, &c. which has not a tilt, before he shall use the same upon any turnpike-road, his, her or their christian and surname, and the place of his, her or their abode; and every owner of every stage waggon or cart shall, over and above his, her or their christian and surnames, paint or cause to be painted on the part, and in manner as aforesaid, the following words, COM-

MON

MON STAGE WAGGON, or CART, as the case may be: and if any owner of any such waggon, &c. shall travel with or use any such waggon, &c. without having his christian name and surname, and place of abode, so painted thereon; or if any person shall paint any false or fictitious name on such waggon, &c. he shall forfeit five pounds: and if any owner of any common stage waggon or cart shall travel with or use the same, without having the words thereby required to be painted thereon respectively; he shall forfeit forty shillings.

Travelling
with a ficti-
tious name
thereon for-
feits 5*l.* and
without
words re-
quired 40*s.*

Sec. 19. "And whereas by several acts of parliament made for amending particular turnpike-roads, several extraordinary tolls are directed to be levied and paid for waggons, carts and other carriages, drawn by more than a certain number of horses or beasts of draught therein respectively mentioned, with an intent in effect to prohibit the passage of such carriages, and thereby the better to preserve the said roads; now it is hereby further enacted, that it shall be lawful for the trustees as aforesaid, or any five of them, within their respective districts, and they are hereby authorized and required, to mitigate and reduce the said high and extraordinary tolls in respect of such waggons or other wheel carriages only having wheels of the breadth of nine inches as aforesaid, in such manner as no greater toll, in respect to waggons, be demanded or taken for the same than is provided and directed by the said acts respectively, to be paid and taken for waggons.

MOD
MOM

gons and other four wheel carriages drawn by four horses or beasts of draught; and that no greater toll be demanded for carts, having the fellies of their wheels of the breadth of nine inches, than is provided and directed by the said acts respectively, to be taken for carts drawn by three horses; and the said trustees within their respective districts, or any five or more of them respectively, are hereby authorized and required to give directions in writing to the several collectors within such their respective districts, to take and receive such tolls and duties, and no other.

Tolls are to be raised one half more on all narrow wheeled waggons.

SECT. 20. "The trustees, or such persons as shall be authorized by them, shall and may, demand and take for every waggon, wain, cart or carriage, having the fellies of the wheels thereof of less breadth than nine inches from side to side at the least, at the bottom or sole thereof, and for the horses or beasts of draught drawing the same, one half more than the tolls which are payable for the same respectively by any act or acts of parliament for making, or repairing turnpike-roads, before any such waggon, &c. shall be permitted to pass through any turnpike-gate.

SECT. 21. "Provided that it shall be lawful for any cart or carriage drawn by two horses or four oxen, and no more, having the fellies of the wheels of the breadth of six inches at the bottom from side to side, to pass upon any turnpike-road, paying the tolls or duties required by any of the said acts respectively.

SECT.

Highways. (Turnpike.)

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Sec. 22. "And whereas there are in several acts exemptions allowed from payment of tolls in particular cases therein respectively mentioned: Be it therefore enacted, that no person shall, by virtue of such acts, have the benefit of any exemption from toll or part of tolls; unless the waggon, wain, cart or other carriage, have the sole of the fellyes of the wheels of the breadth of nine inches; except carriages drawn by two horses or four oxen, and no more, having the sole of the fellyes of the wheels of the breadth of six inches as aforesaid; and except carts and carriages employed in husbandry.

Sec. 23. "Provided, That nothing in this act shall extend to any chaise marine, coach, landau, berlin, chariot, calash or hearse; or to a caravan or covered carriage of any person for his private use; or to such ammunition for his majesty's service; or to any carriage drawn by one horse or two oxen; or to any carriage, having the sole or bottom of the fellyes of the wheels of the breadth of nine inches which shall be laden with one stone, block of marble, one piece of metal, or one piece of timber.

Carriages which do not come within the intention of this act.

Sec. 24. "If any person shall take the benefit of any exemption under this act, in any fraudulent manner, he shall forfeit for every offence, not exceeding five pounds, nor less than forty shillings.

Sec. 25. "It shall be lawful for the trustees for repairing such particular roads as aforesaid, or any thirteen of them, at a meet-

Tolls may be lessened by trustees, &c.

ing

ing to be held for that purpose, of which one calendar month's notice shall be given in writing, to be affixed on all the turnpike-gates upon such respective roads, from time to time to lessen or reduce the tolls granted by any act or acts, during such time as they or any thirteen of them shall think proper; and afterwards if they shall see occasion to advance the toll so lessened to any sum not exceeding the several rates granted by such acts of parliament.

Sec. 26. " Provided, That where the whole money borrowed on the credit of the tolls granted by any act shall not have been paid, no such tolls shall be reduced without the consent of the person or persons intitled to five sixths of the money due upon such tolls.

Statute duty
to be propor-
tioned be-
tween turn-
pikes and
other high-
ways.

Sec. 27. " Where there are two or more turnpike-roads under several acts, within the same parish or place, and the statute duty directed by all such acts to be applied for the repair of such turnpike-roads within such parish, &c. shall exceed three days duty; then two or more justices shall and may, at some special sessions, proportion such statute duty betwixt such turnpike-roads and the other highways in such parish, &c. in such manner as they shall think fit.

401. penalty
on surveyors
suffering any
obstruction
to remain on
the roads.

Sec. 28. " If any surveyor, or other person having the care of any turnpike-road shall suffer to remain, for forty-eight hours, in any part within twelve feet on either side of the middle of such road, any posts, heaps of stones, rubbish, &c. by which the passage may be impeded, confined or straitened, he shall

forfeit

forfeit forty shillings, to be recovered before one justice of the peace.

Stat. 29. "If any person shall make any hedge, ditch or other fence, on any turnpike-road not inclosed on both sides, within the distance of thirty feet from the middle of a turnpike road, or shall plough, or break up the soil of any land within fifteen feet from the middle thereof; he shall forfeit forty shillings to the informer; the trustees, or any five of them, to cause such hedge, ditch or fence to be taken down or filled up at the expence of the person to whom the same shall belong.

Stat. 30. "The commissioners or trustees shall direct the surveyor of every turnpike-road where several highways meet, forthwith to erect in the most convenient place where such ways meet, a stone or post with an inscription thereon in large letters, containing the name of and distance from the next market town or towns, or other considerable place or places; and also at the several approaches to deep or dangerous floods, graduated stones or posts, denoting the depth of water in the deepest part of the same; and likewise such direction posts or stones as the said commissioners, &c. shall judge necessary, for the guiding of travellers safely through the said floods; and also shall order the said surveyor to erect milestones upon such turnpike-road; and if any surveyor or surveyors shall, by the space of three months after such direction, neglect to cause any such stone or post

Direction
posts to be
set up where
highways
meet;

Milestone
to be set up.

post to be fixed as aforesaid; he or they shall forfeit twenty shillings.

Penalty not exceeding *g*l. nor less than 10*s*. on destroying posts, &c. upon the sides of the roads.

*Sec*t. 31. "Whereas some evil disposed persons may break, damage, or throw down, the stones, bricks, or wood, fixed upon the parapets, &c. of bridges, and may destroy, obliterate, or deface, any mile-stone, post, or direction post or stone, erected upon any turnpike-road: Be it therefore enacted, that every person guilty of any such offence, shall forfeit, for every of the said offences, not exceeding five pounds, nor less than ten shillings; or be committed to the house of correction to be whipped, and kept to hard labour not exceeding one calendar month, nor less than seven days.

Pulling down turnpike-gates, posts, &c. death without benefit of clergy.

*Sec*t. 32. "If any person shall wilfully pull down, or otherwise destroy any turnpike-gate, or any post or posts, rail, wall, chain, bar, or other fence, or fences, belonging thereto; or any house erected, for the use of any such turnpike-gate; or any crane, machine, or engine, for weighing carriages; or shall rescue any person lawfully in custody, for any of the said offences; then, and in any of the said cases, every person so offending, shall be adjudged guilty of felony, and shall suffer death, without benefit of clergy: and any indictment for such offences may be tried, and determined, in any adjacent county in *England*, in such manner as if the facts had been therein committed.

The hundred to make good damages.

*Sec*t. 33. "And that the inhabitants of every hundred, within which such last mentioned offences shall be committed, shall make

make full satisfaction for the damages that shall be thereby suffered; and such damages may be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record, in the name of the clerk of the peace of the county for the time being, without naming the christian name or surname of the clerk of the peace; and all the inhabitants of such hundred shall be rateably taxed towards an equal contribution for the relief of such inhabitant or inhabitants, against whom execution for such damages shall be levied; which tax shall be raised by such means, as is prescribed for the raising the damages recovered against inhabitants of hundreds in case of robberies, by any act or acts of parliament: Provided, that upon conviction of any such offender, within twelve months after the offence committed, any hundred, or the inhabitants thereof, liable to make, and having made, such satisfaction, shall be repaid out of the tolls of the turnpike where such offence was committed.

Sec. 34. "No person shall be qualified or capable of acting as a trustee, unless he shall be, in his own right, or that of his wife, in the actual possession, or receipt of the rents and profits of lands, &c. of the clear yearly value of forty pounds; or possessed of personal estate to the value of eight hundred pounds; or shall be heir apparent of a person possessed of an estate in land of the yearly value of eighty pounds; and unless he hath taken, or shall (not being such heir-apparent

Qualificati-
on for sur-
veyor 40 l.
per annum,
or 800 l.
personal
estate.

(as aforesaid) before he acts as such trustee, take and subscribe the oath following, before any two or more of the trustees appointed in pursuance of such act :

I A. B. do swear, That I truly and bona fide am, in my own right, or in the right of my wife, in the actual possession and enjoyment, or receipt, of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of (forty pounds) or possessed of, or intitled to, a personal estate, to the value of (eight hundred pounds, as the case may be.) So help me GOD.

If any person shall act contrary to the true intent hereof, he shall forfeit fifty pounds to any person who shall sue ; and such person so sued shall prove that he is qualified as above, or shall pay the said fifty pounds.

SECT. 35. " And all clerks, treasurers, surveyors, and other officers appointed, by any act for the repair of turnpike-roads, shall, within ten days after notice, in writing, given by the commissioners or trustees, or any five of them, at a meeting held pursuant to such act, produce and deliver up to such trustees, all books, accounts, papers, or writings whatsoever relative to the execution of such respective offices, which shall be in their custody or power ; and every such officer neglecting to produce such books, accounts, papers, or writings, after such notice, shall forfeit twenty pounds.

Persons disqualified from acting as trustees,

SECT. 36. " And no person who shall keep any victualling house, alehouse, or other house

Highways. (Turnpike.)

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house of publick entertainment, or who shall sell any wine, cyder, beer, ale, &c. by retail shall be capable of acting as a trustee, or of enjoying any place of trust or profit under the trustees, or of farming the tolls, during such time as he shall keep such victualing house, &c.

SECT. 37. "The trustees of the several roads respectively, or any five of them, at a general meeting, may direct prosecutions by indictment against the offenders for any nuisance done, in or upon any of the turnpike-roads, under their care; provided, that nothing in this act shall be construed to empower the trustees to prosecute any person for any such offence, unless upon the confession of the offender, or that one or more witnesses can be produced to prove the commission of such offence.

Nuisances on the road may be prosecuted at the expence of the revenues of the turnpike.

SECT. 38. "And whereas fraudulent contrivances may be practised by offenders, by setting up colourable prosecutions and seizures, with intent to favour offenders against the said laws, and to discourage just and real prosecutions: for remedy thereof, be it enacted, That it shall be lawful for every justice before whom there shall be any information for any penalty, &c. and they are hereby required, where any prior seizure, information or conviction, shall be set up by way of defence, or to defeat any information, or any seizure for any forfeiture or penalty inflicted as aforesaid, to examine into the real merits of such prior seizure, information, proceeding or conviction; and if it shall appear that the

Justices to decide concerning fraudulent seizures.

the same was done to favour the offender, such prior seizure, information, &c. shall be deemed to be fraudulent, and null and void; and such justice shall proceed to determine, as if no prior seizure, informations, &c. had been made.

Stat. 39. "And where a sufficient number of the trustees shall not meet on the day appointed, by any act or acts respectively, for their first meeting; or shall not meet on the day appointed, by adjournment, or for want of a proper adjournment; then it shall be lawful for so many of the said trustees as shall meet, or the major part of them, or if no such trustee shall be present, for their clerk or clerks, or cause notice in writing to be affixed on all turnpikes on the said respective roads, at least ten days before the intended meeting; appointing such trustees to meet at such place where the preceding meeting was appointed to have been held, or at the place directed for the first meeting of such trustees, if no such preceding meeting shall have been held; and the said trustees, when met in pursuance of such notice, may proceed and carry such act or acts into execution, in the same manner as they might have done if no such neglect had happened.

No adjournment to be for longer than three months,

Stat. 40. "Provided, That no such meeting shall be adjourned for any longer time than three months; and that no business shall be done at any meeting before ten in the forenoon; and that no adjournment shall be made to any hour later than two in the afternoon; and that every act agreed upon at

any meeting, shall be signed by a competent number of trustees, or otherwise, every such meeting, &c. shall be of none effect.

Sec. 41. "And if the commissioners and trustees shall abuse or exceed their power in erecting turnpikes, &c. the justices of the peace in their general quarter sessions, upon complaint of such abuse or excess of power in such commissioners and trustees, in a summary way may hear and determine the same.

Commissioners and trustees exceeding their power how treated.

Sec. 42. "And every mortgagee that hath or may be in possession of any toll-gate on any turnpike-road, shall, within fourteen days after he shall have received notice in writing from the trustees, or commissioners, or any five of them, render upon oath, an exact account in writing, to such trustees or commissioners, or to any person appointed by them, or any five of them, of all monies received by such mortgagee, at such toll-gate or bar, and of what he has expended in keeping the same; or he shall severally forfeit to the said trustees or commissioners ten pounds, to be recovered in a summary manner, before one justice of the peace.

Mortgagee in possession must give an account upon oath.

Sec. 43. "And if any such mortgagee shall keep possession of any toll-gate, and receive the tolls thereat, after such mortgagee shall have received the full money due on his mortgage, and the interest thereof, with costs, such mortgagee shall forfeit double the sum of money he shall have received above the money due as aforesaid, with treble costs of suit.

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A toll-keeper discharged, refusing to resign the premises, may be compelled.

Sec. 44. " Provided always, That any two or more trustees or commissioners, upon the death of any toll-gatherer, may appoint some other fit person in his place, until the next meeting of the trustees or commissioners; which person shall have the like power, and be accountable in the same manner, in all respects, as the person so dying had; and if any toll-gatherer, who shall be discharged, shall refuse to deliver up the possession of the house, &c. which he enjoyed in right of his office, within two days after notice; or if the wife or family of such toll-gatherer who shall die as aforesaid, shall refuse to deliver up the possession of such house, &c. within four days after such new appointment shall be made; then any justice of the peace, by warrant under his hand and seal, may order the constable or other peace officer, with such assistance as shall be necessary, to enter such house, &c. in the day-time, and remove the persons therein, together with their goods, out of such house, and put the new appointed officer into the possession thereof.

Gate-keeper to account upon oath.

Sec. 45. " And the gate-keeper of every such toll-gate, and every surveyor, shall, when required, by notice in writing from the said trustees or commissioners, or any five of them, render upon oath, a true account in writing to the said trustees or commissioners, or any five of them, of all monies received by him, at such toll-gate, or otherwise on account of such turnpike-road, under the penalty of five pounds;

pounds; to be recovered in a summary manner before one justice of the peace.

Sec. 46. "And no gate-keeper, or person renting the tolls thereof, and residing in any toll-house belonging to the said trust, shall be removeable therefrom, by the order of any justices of the peace, in pursuance of any laws now in being for the regulation of the poor, unless he shall become actually chargeable to some parish; and no such gate-keeper or person renting such tolls, and residing in such toll-house shall thereby gain a settlement in any parish, whatsoever; and no tolls shall be taken at any gate erected by the trustees of any turnpike-road, nor any person, in respect of such tolls or toll-house, shall be rated towards the payment of any poor's rate, or any other publick or parochial levy.

Toll-keeper
not charge-
able to the
parish.

Sec. 47. "And every constable, headborough, or tythingman, neglecting to put this act into execution; and every surveyor, and every toll-gatherer, and all person employed by commissioners or trustees, as do or shall receive salaries or rewards, who shall wilfully neglect, for the space of one week after the offence committed, to seize any supernumerary horse or horses drawing within their view or knowledge in any waggon, wain, or cart, contrary to the true intent of this act; or shall wilfully neglect for the same time to lay such information, upon oath, as by this act is directed; shall upon due information made, upon oath, forfeit for every such neglect ten pounds.

Constables
and tything-
men neglect-
ing to seize,
&c. forfeit
10/.

Any seizure
or distress
made for any
forfeiture
incurred,

to be deli-
vered to the
constable,
&c.

Sec. 48. " Provided always, That what-
ever person who shall make any seizure of any
horse, beast, &c. for any of the forfeitures
hereby incurred, unless by warrant from a
justice, or commissioners of any turnpike,
pursuant to the authority hereby given; such
person shall deliver the same into the custody
of the constable, or some other parish officer,
who are hereby required to receive into their
custody, and safely to keep the same, till the
person who made such seizure shall make
proof, upon oath, of the offence committed;
but if such proof shall not be made within six
days after such delivery, then such horse, &c.
shall be restored to the owner; and the person
making such seizure shall pay such reasonable
charges to the constable or other officer for
the keeping and securing thereof, as the said
justice shall direct; and the said justices are
hereby required, after conviction, to issue
their precept to such constable or parish offi-
cer, immediately to deliver the horse, &c. so
forfeited, to the party who seized the same,
for their sole use and benefit: paying such
reasonable charges for keeping such horse,
&c. as the said justice shall direct: and every
person making seizure of any such horse, &c.
and not prosecuting such seizure in manner
aforesaid, shall forfeit to the owner forty
shillings.

Inhabitant
of the parish
a proper
witness.

Sec. 49. " Provided, That no conviction
shall be made by virtue of this act, unless
upon confession of the party accused, or the
oath of one or more credible witnesses; and
that any inhabitant of any parish, in which

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any offence shall be committed, shall be deemed a competent witness, and that any justice of the peace may act in the execution of this act, notwithstanding he may be a trustee for repairing and amending such roads.

Sec. 50. "If any person shall resist any person employed in the due execution of this act, or shall assault any collector in the execution of his office; or shall forcibly pass through any turnpike-gate, without paying the toll; or shall hinder, or obstruct, any such person in the measuring or gauging the wheels of any carriage; or seizing of any horse, &c. or make any rescue; or if any constable, headborough or tythingman, shall neglect to execute any warrant granted by any justice, &c. every such person offending therein, shall, for every such offence, forfeit not exceeding ten pounds, nor less than forty shillings; and in default of payment, a justice may commit such person to the common goal or house of correction, for any time not exceeding three months, unless the forfeiture shall be sooner paid.

Resisting collectors, or refusing to pay toll, to forfeit not more than 10 l. nor less than 40 s.

Sec. 51. "All penalties and forfeitures by this act imposed for any offence against the same, (the manner of levying of which is not hereby otherwise particularly directed), shall be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of some justice of the peace for the county, &c. rendering the overplus of such distress, if any, to parties, after deducting the charges of making

All penalties &c. to be levied by distress and sale.

the same; and the penalties, &c. when so levied, shall be paid, half to the informer, and half to the surveyor; and if such distress cannot be found, such justice may, and he is hereby required, by warrant under his hand and seal, to commit such offender to the common goal or house of correction, not exceeding three months; unless the said penalty, forfeiture, costs or charges, shall be sooner paid: and if such offender shall live out of the jurisdiction of the justices of the peace hereby authorized to grant such warrant; any justice of the peace of the county, riding, division, &c. and every such justice is hereby required, upon request to him for that purpose made, and upon a true copy of the conviction whereby such forfeiture or penalty was incurred, or of the order for the payment of such costs or charges produced and approved by a credible witness upon oath, by warrant under his hand and seal, to cause the penalty mentioned in such conviction, or the costs or charges mentioned in such order, to be levied by distress and sale of the goods and chattels of such offender; and if no sufficient distress can be had, to commit such offender, to the common gaol or house of correction, for the time and in manner aforesaid.

All penalties
&c. to be
expended on
the road,

Stat. 52. "Provided always, That whatever penalty shall be recovered on the information of the surveyor, or any toll-gatherer, or other person employed by the commissioners or trustees, shall be applied to the amending of the said turnpike-roads respectively.

Stat.

Sec. 53. "And every prosecutor or in-
former may either sue for any forfeiture, in
the same manner as such forfeitures are re-
spectively directed to be sued for, or by action
at law, in any of his majesty's courts of re-
cord in manner following, (that is to say)
where any person shall be liable to such pe-
cuniary penalty, he may sue for and recover
the same by action of debt; in which it shall
be sufficient to declare, that the defendant is
indebted to the plaintiff in the sum of

Prosecutors
may sue by
action at
law or
otherwise.

being forfeited by an act passed
in the seventh year of the reign of his present
majesty, intituled, *An act to explain, amend and
reduce into one act of parliament, the general laws
now in being for regulating the turnpike-roads of
this kingdom, and for other purposes therein men-
tioned*; and where the forfeiture shall be of
any horse, &c. by an action of trover against
the person liable to such forfeiture, in which
the said forfeiture shall be sufficient evidence
of property to the plaintiff; in which the
value of such horse, &c. liable to the forfeiture,
shall be given in damages, without any proof
of seizure or demand; and the plaintiff, if
he recover, shall have full costs: provided,
that ten days notice in writing be given to
the party offending, previous to the com-
mencement of such action; and that the
same be brought and commenced within one
calendar month after the offence committed.

Sec. 54. "And where any distress shall be
made for any sums of money by virtue of this
act, the distress shall not be deemed unlawful,
nor the parties trespassers, on account of any

In making
distress want
of form no
trespass.

default or want of form in any proceedings relating thereto; nor shall the parties dis-
 training be deemed trespassers *ab initio*, on ac-
 count of any irregularity which shall be after-
 wards done by the parties distraining; and
 Sec. 55. Provided, That no plaintiff
 shall recover in any action for such irregular-
 ity, trespass or wrongful proceedings, in re-
 der of amends shall be made by or on the
 behalf of the party, who shall have com-
 mitted the same, before such action brought;
 and if no such tender shall have been made,
 the defendants may, by leave of the court,
 at any time before issue joined, pay into court
 such sum of money as they shall see fit;
 whereupon such proceedings shall be had, as
 in other actions where the defendant is allow-
 ed to pay money into court.

Any person
 thinking
 himself ag-
 grieved by
 the justices,
 commission-
 ers or trust-
 ees, may
 appeal to the
 quarter ses-
 sions.

Sec. 56. " Provided, That if any person
 shall think himself aggrieved by any thing
 done by any justices, commissioners or trust-
 ees, in pursuance of this act, and for which
 no particular method of relief hath been al-
 ready appointed, he may appeal to the justices
 at any general quarter sessions, within six
 months after the cause of such complaint shall
 have arisen; such appellant first giving to
 such justice, commissioners or trustees eight
 days notice at the least in writing of his in-
 tention to bring such appeal, and of the mat-
 ter thereof; and within four days after such
 notice, entering into recognizance with one
 sufficient surety, conditioned to try such ap-
 peal; and every justice, and the commission-
 ers or trustees, having received notice of such
 appeal,

appeal, shall return all proceedings had before them thereon to the said justices at their general or quarter sessions, on pain of forfeiting five pounds for every such neglect; and the said justices at such session shall hear and finally determine the causes of such appeal in a summary way, and award such costs to the parties as they shall think proper; to be levied as herein before directed; and the determination of such quarter sessions shall be final; and no proceedings to be had in pursuance of this act shall be quashed for want of form, or removed by *certiorari*, or any other writ or process, into any of his Majesty's courts of record at *Westminster*.

Such appeal may be determined by the justices in a summary way.

Sec. 57. "Provided, That no such appeal shall be made for the forfeiture of any horse, &c. by virtue of this act, unless the person convicted shall, at the time of his conviction, give notice of his intention to appeal; and enter into recognizance, with sufficient sureties, to pay the value of such horse, &c. in case such conviction shall be affirmed upon such appeal; and upon his giving such security, such horse, &c. shall be forthwith delivered to such person.

Must give notice of intention to appeal.

Sec. 58. "Where any oath is hereby required to be taken, the justices of any county or place, or the trustees or the commissioners of any turnpike road, as the case may be, and according to the several jurisdictions herein given to them respectively as aforesaid, shall, and they are hereby respectively empowered to administer the same.

Highways. (Turnpike.)

Sec. 59. " This shall commence and take effect on the twenty-ninth day of September next ensuing.

All actions in pursuance of this act must be brought within three months.

Sec. 60. " And if any action shall be commenced against any person for anything done in pursuance of this act, then such action shall be commenced within three calendar months after the fact committed; and it shall be brought in the county, riding, division or place where the person, against whom such action shall be commenced, doth ordinarily inhabit, or in the county, &c. where the fact was committed; and the defendant in such action shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and that the same was done in pursuance and by the authority of this act: and if the same shall appear to have been so done, or if any such action shall be brought after the time limited, or be brought and laid in any other county, riding, division or place than as before mentioned, then the jury shall find for the defendant; or if the plaintiff shall become nonsuit, or discontinue his action after the defendant shall have appeared; or if, upon demurrer, judgment shall be given against the plaintiff, the defendant shall recover treble costs, and have the like remedy for recovery thereof, as any defendant hath in any other cases by law.

The several acts repealed by virtue of this act.

Sec. 61. " And from and after the twenty-eighth day of September next, so much of an act made in the first year of George the second, as relates to turnpikes; as also so much

much of an act passed in the fifth year of George the second, as relates to turnpikes; as also so much of an act passed in the eighth year of George the second, as relates to turnpikes; as also so much of an act passed in the fourteenth year of George the second, as relates to the turnpike-roads of this kingdom; as also an act passed in the twenty-first year of George the second, for the preservation of the publick roads in that part of Great Britain called England; and so much of an act passed in the third year of the reign of king William and queen Mary, except so much thereof as relates to the price for carriage of goods; as also an act passed in the twenty-fourth year of George the second, except so much thereof as relates to the preventing mischief occasioned by the drivers riding upon carts, drays, carrs and waggons in the city of London; as also another act passed in the twenty-sixth year of George the second, (intituled, *An act for the amendment and preservation of the publick highways and turnpike roads of this kingdom, and for the more effectual execution of the laws relating thereto*;) as also an act passed in the twenty eighth year of George the second, except so much thereof as continues the acts then made for repairing and amending turnpike-roads, subject to the tolls and duties by such acts respectively granted; as also an act passed in the thirtieth year of George the second, intituled, *An act for enlarging the times for the first meetings of commissioners or trustees, for putting in execution certain acts of this session of parliament*; and al-

Lord's Day.

so another act passed in the thirtieth year of George the second, intituled, *An act to render more effectual the several laws now in being, for the amendment and preservation of the publick highways and turnpike roads, &c.* as also an act passed in the thirty-first year of George the second, intituled, *An act for enlarging the times for the first meetings of commissioners, &c.* as also an act passed in the fifth year of the reign of his present Majesty, intituled, *An act to continue part of an act made in the thirtieth year of the reign of his late Majesty king George the second;* as also an act passed in the sixth year of his present Majesty, intituled, *An act for explaining, amending, and further enforcing, the execution of two several acts, one made in the twenty-sixth year of his late Majesty, and the other in the fifth year of his present Majesty's reign, for the amendment and preservation of the publick highways and turnpike-roads of this kingdom, &c.* shall be, and the same are hereby repealed.

Lord's Day.

BY the 29 C. 2. c. 7. No drover, horse-courser, waggoner, butcher, higler, or any of their servants, shall travel, or come to his inn or lodging on the Lord's Day, on pain of 20s. and no tradesman, artificer, workman, labourer, or any other person, shall exercise any worldly labour or business,

on the Lord's day; other than works of necessity and charity; and except dressing of meat in families, and dressing and selling of meat in inns, or cook shops, or victualling houses, for such as cannot otherwise be provided; (and by the Stat. 9 An. c. 23. s. 20. except licensed hackney coachmen and chairmen within the bills of mortality;) on pain of every offender who is above 14 years of age, forfeiting 5 s. and also that no person shall publickly cry, or expose to sale, any wares, merchandizes, fruits, herbs, goods or chattels, whatsoever, on the Lord's Day, (except crying and selling of milk, before nine in the morning and after four in the afternoon; and except mackarel, which may be sold on *Sundays*, before or after divine service, on pain of forfeiting the same; and no person shall employ or travel on the Lord's Day, with any boat, wherry, lighter, or barge, unless allowed by a justice on extraordinary occasion; and except 40 watermen who may ply on the *Thames* on *Sundays* betwixt *Vauxhall* and *Limehouse*, (by the 11 & 12 W. c. 21. s. 13.) on pain of 5 s. and if any person shall be convicted of any such offence in ten days after it is committed, before one justice, on view, or confession, or oath of one witness, the justice shall give warrant to the constables or churchwardens, to seize the goods so cried, and to sell the same; and to levy the other forfeitures by distress; to the use of the poor, except that the justice of the peace may out of the same reward the informer with any sum not exceeding

ceeding one third part. And for want of distress, the offender shall be set publickly in the stocks for two hours.

By the 2 G. 3. c. 15. It shall be lawful for fish carriages to pass on *Sundays* and holidays, either laden or returning empty.

East. 32 G. 2. King and Cox. On an information moved for against a justice of the peace, for refusing to take an information against a baker, for exercising his trade on a *Sunday*. On shewing cause, it appeared, that the baker was not charged with baking bread, but the charge against him was for baking puddings, and pies, and other things for dinner. The court were of opinion, this was not an offence within the act; but falls within the exceptions of works of necessity and charity, and within the equity of the proviso as being a cook's shop; it being equally reasonable that the baker should bake for others, as that a cook should roast and boil for others: And it certainly is better that one baker and his men should stay at home, than many families and servants. And the rule to shew cause was discharged, with costs. *Burrow. Mansfield: 785.*

Killing
game on the
Lord's Day.

If any person who shall, on a *Sunday*, take, kill, or destroy, or use any gun, dog, snare, net, or other engine for taking, killing or destroying, any hare, pheasant, partridge, moor game, heath game, or grouse; he shall, on being convicted thereof on the oath of one witness before one justice, forfeit any sum not exceeding 30*l* nor less than 20*l*, and if not forthwith paid, it shall be levied.

levied by distress; half to the informer, and and half to the poor: And for want of distress, the justice shall send the offender to the common gaol or house of correction, for any time not exceeding six calendar months, nor less than three. 10 G. 3. c. 19.

No person or persons upon the Lord's Day, shall serve any writ, process, warrant, order, judgment, or decree, (except in cases of treason, felony, or breach of the peace), but the service shall be void; and the person serving the same, liable to answer damages to the party grieved, as if he had done the same without any writ, process, warrant, order, judgment, or decree. 29 G. 2. c. 7. f. 6.

Of serving a process on the Lord's Day.

No hundred shall be answerable for any robbery committed on the Lord's Day: but the inhabitants shall make hue and cry after the offenders, on pain of forfeiting to the king as much as might have been recovered by the party robbed against the hundred, if he had been robbed on any other day. 29 G. 2. c. 7. f. 5.

Robbery on the Lord's Day.

Overseers.

BY the statute of 43 El. c. 2. f. 1. It is enacted, That the churchwardens of every parish, and four, three, or two substantial householders therein, as shall be thought meet, having respect to the extent of the parish, to be nominated yearly in *Easter* week, or with-
in

in one month after *Easter*, under the hand and seal of two or more justices in the same county, one whereof to be of the quorum, dwelling in or near the parish or division, shall be called overseers of the poor of the same parish.

And by the 13th & 14th C. 2. c. 12. Whereas the inhabitants of *Lancashire*, *Cheshire*, *Derbyshire*, *Yorkshire*, *Northumberland*, the bishoprick of *Durham*, *Cumberland*, and *Westmorland*, and many other counties in *England*, and *Wales*, on account of the largeness of the parishes, cannot reap the benefit of the act of the 43rd El. It is therefore enacted, That all the poor, needy, impotent, and lame persons, within every township or village in the several counties aforesaid, shall be provided for, and set on work, within the several and respective township and village wherein he shall inhabit, or wherein he was last lawfully settled; and there shall be yearly chosen two or more overseers, within every of the said townships or villages respectively.

In any township or place where there are no churchwardens, the overseers alone may act as churchwardens and overseers may do in other places. 17 G. 2. c. 38.

If any overseer shall die, remove, or become insolvent, before the expiration of his office, two justices (on oath thereof made) may appoint another in his stead. 17 G. 2. c. 38.

And if there shall be no such nomination of overseers as is before appointed, every justice

justice of the division shall forfeit 5 l. to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress, by warrant from the sessions. 43 El. c. 2. f. 10.

The churchwardens (as before observed) shall were overseers of the poor long before this statute of the 43. El. And hereby they need no formal appointment to the office of overseer, but the statute declares them to be such.

But by a remedial clause, in the act of the 17 G. 2. c. 38. It is enacted, that the distress for the poor rate shall not be deemed unlawful, for any defect or want of form, in the warrant for the appointment of overseers. f. 8.

The overseers being thus appointed, and taking upon them the office, shall within 14 days receive the books of assessments and of accounts, from their predecessors, and what money, &c. shall be in their hands, and reimburse them their arrears. 17 G. 2. c. 38. f. 1, 11, 13.

And by the 43 El. c. 2. f. 1. 2. 6. 11. They shall take order from time to time, with the consent of two such justices of the peace, for setting to work the children of all such whose parents shall not by them, or the greater part of them, be thought able, to maintain such children; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary trade. Such churchwardens and overseers, or such of them as shall

every before appointed as is recited not to

not be let by sickness or other just excuse, to be allowed by two such justices, shall meet at least once a month, in the church, on *Sunday* in the afternoon, after divine service, there to consider of some proper course to be taken, and order to be set down in the premisses; on pain that each of them absenting themselves without lawful cause, from such monthly meeting, shall forfeit for every default 20 s. to the poor; to be levied by one of the churchwardens and overseers, by warrant from two such justices, by distress; or in default thereof, any two such justices may commit such offender to the common gaol, there to continue without bail or main-prize, till such forfeiture shall be paid. Provided, nevertheless, that if any person shall be aggrieved by any act done by the said churchwardens, &c. he may appeal to the general quarter-sessions, whose order therein shall bind all parties.

By the 2 G. 3. c. 20. It is enacted, That no person serving for himself as a private man in the militia, shall during the time of such service, be liable to serve as overseer of the poor.

By the 18 G. 2. c. 15. All freemen of the corporation of surgeons in *London*, are exempted from the office of overseer.

Sca. 512.

5 Mod. 733.

A mandamus was directed to the justices of the county of *Nottingham*, reciting that within the ville of *Rufford* in the forest of *Sherwood*, there are many substantial freeholders able to contribute to the maintenance of the poor, and that there are no churchwardens

or

or overseers to make a rate; and that there are many poor unprovided for; therefore it commands them to appoint overseers. They return, that the ville of *Rufford* is part of no parish, but time out of mind has been extraparochial, without either church, chapel or parochial rates; and that there never were any overseers of the poor; and therefore they cannot appoint. And there having been only an obiter opinion of the court, in the case of *Dolling and Stokeland, Hill. 11 Ann.* that overseers of the poor might be appointed in an extraparochial place; the court directed an argument, that the case might be solemnly determined. And after argument and consideration of all the statutes relating to the poor, the court were of opinion, that the powers given by the *43 Eliz.* to be executed in parishes, were by *stat. 13 & 14 Car. 2.* extended to all townships and villages, whether parochial or extraparochial: that although most of the forests in *England* are extraparochial, yet they ought to maintain their own poor; and consequently overseers may be appointed; for which purpose in this case a peremptory mandamus was awarded.

An appointment of five overseers was thought to exceed the direction of the statute; but in as much as the *13 & 14 Car. 2.* impowers the justices of the peace, to appoint two or more indefinitely in townships or villages, and it hath been the custom in large parishes to appoint more than four, the court would not quash the appointment.

Seff. Ca. vol. 2. 148. Mich. 13. Geo. 2. King and Harman,

In

Str. 1261.
Mich. 20
Geo. 2. case
of the over-
seers of
Woolly in
Hereford-
shire.

Foley, 4.
East. 13
Geo. 1. *King*
and *Clerken-*
well.

Strange.
1123, *Hil.*
13 *Geo.* 2.
King and
Sparrow.

In this case there were two sets of overseers appointed, and both quashed; one, because the persons appointed were described only as principal inhabitants, instead of pursuing the words of the statute, which are substantial householders; and the other, because it only called them substantial householders, without adding there, or in the parish; and this was not in the body of the appointment (as it ought to have been) but only in the direction at the foot of it.

The court seemed to think an appointment of overseers on a Sunday, to be a good appointment; for it may be in *Easter* week, and this is the first day of the week.

[*Within one month after Easter*] On a rule to shew cause, why the appointment of overseers for the town of *Ipswich* should not be quashed, the objection was, that the justices of the peace, upon a mandamus directed to them, had appointed overseers, but that it was not within the month after *Easter*, but afterwards, and that consequently the appointment was void. But by *Lee* *Ch.* 7. As the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the act itself void; for it would subject the parish to very great inconveniencies, for a thing which is not in their power to prevent. To interpret an act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this case, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the

Overseers.

the justices of the peace shall appoint overseers, and that within such a time. Now the justices have neglected their duty, and have not appointed them within the proper time, and by the act have forfeited it, but that doth not make such appointment void. Where the express direction of the act, that they should appoint in that and no other time, it would be otherwise; but here the statute is only directory, and a penalty inflicted on the justices for not observing such directions. It doth seemeth clear that a woman (though she be a substantial householder) ought not to be appointed overseer; but the point was not directly determined. The case was as follows. A mandamus was moved for the justices of the peace, to nominate two substantial householders to be overseers of the parish of *Chardstock*, in *Dorsetshire*; and there was an affidavit, that at a meeting of the parish after *Easter* last, a man and a woman were elected overseers, and at a meeting of the justices of the peace they approved of the man, but not the woman, as being unfit to serve as overseer; and the old overseers refusing to nominate any other person, the justices approved of the man only. By *Powell*, *J.* A woman is not to be an overseer of the poor, and there can be no custom in a parish to put her in, because of her being an householder. And *Parker, Ch. J.* directed, that the parish should apply to the justices of the peace to have another nominated, and if they refused,

refused, to apply to the court for a mandamus. *E. 10 An. Vin. Tit. Poor. A.*

Overseer refusing to take the office.

M. 14 G. 2. K. and Jones. A person duly appointed and chosen, was indicted for not taking upon him the office of overseer of the poor; and by the court it was held to be an offence indictable; for although the statute appoints a penalty, yet that penalty is not for refusing to take the office, but for neglect of duty in such office; and where a statute commands a thing, and mentions no penalty for disobedience, the offence is indictable as a contempt of the law. *Seff. C. W. 2. 187 Str. 1146.*

An appointment of overseers, not mentioning the justices of the peace to be of the division, was held to be good enough; for that the words in this case are only directory.

Burials in woollen to be accounted for.

As often as overseers yield up their accounts to the justices, they shall give in the name and quality of every person that has been buried within the parish, from the time of their former account; and of such certificates as came to their hands from the parson, &c. of persons buried contrary to the statute 30 *Car. 2. c. 3.* for burying in woollen; and also of their levying the penalty of 5*l.* and give an account of the disposal of it, or they shall forfeit 5*l.* And their accounts shall not be allowed, till they have accounted for the burials. Affidavit is to be made in eight days, that a person was buried in woollen.

What persons may be set at work.

Overseers of the poor are to set at work all those who have no visible income to maintain

tain themselves, or follow no trade or business to get their livelihoods; and they may with the consent of two justices set up any trade, mystery or occupation for the setting up. *Trades set up.* to work, and relieving the poor. *Stat. 3*

Car. c. 4. Children of those whose parents shall not, by the churchwardens and overseers, be thought able to keep them, are to be thus set at work, *43 Eliz. c. 2.* And any justice may send to the house of correction, &c. persons refusing to be employed. *Not to disburse monies.*

Overseers of the poor are not obliged to disburse their own money for the relief of the poor; but if they do, a rate ought to be made to reimburse them; and they may make a rate for that purpose, and when the money is levied, pay themselves; and if the justices refuse to sign such rate, then a mandamus may be issued, requiring them to do it. *When may be compelled.* 6

Mod. 97.

But if overseers of the poor will not disburse any thing, the justices may compel them, and make a tax for the poor themselves. *Per Windham.* *Overseers to account before justices.*

All overseers shall within four days after the end of the year, and after other overseers are nominated, give up their accounts before two justices of the peace, of all money received by them, or what is assessed and not received; also what poor they have relieved, what stock they or the poor have in their hands, and of all other things concerning their office, and shall pay over what is in their hands to the new churchwardens and overseers of the poor. *Stat. 43 Eliz. c. 2.*

As overseers and churchwardens in most cases act jointly, and as their power and duty is exactly similar in many particulars, the reader is referred to the title **Churchwardens** for any further information he may want concerning the office of overseers. Under this head, the separate and distinct duty of overseers is given, but under the title **Churchwardens**, will be found those articles treated on in which they are jointly concerned. See also title **Poor**.

Poor.

To meet
once a
month.

OVERSEERS of the poor are to meet once a month in their respective parish churches, to consider of proper methods of relieving and providing for the poor; and every one absenting himself from such monthly meeting, not having some just excuse to be allowed by two justices of the peace, is to forfeit 20s. for every default.

Churchwardens the same.

Churchwardens shall also meet once a month with the overseers, or they may be punished for their neglects; from whence it appears that they have an equal power and charge with the overseers.

Overseers of the poor are to take care that the poor be set at work, or relieved if not able, and to settle them in their habitations.

What poor persons to be relieved,

But no poor are to be relieved, but such whose names are registered in a parish book, relief

kept for that purpose; unless by authority under the hand and seal of a justice of the peace, (on oath made of cause and refusal of relief by overseers, &c. agreeable to 9 Geo. 2. c. 7.) or in case of pestilential diseases, viz. the plague, or the small-pox, in respect of their families only. Stat. 3 & 4 W. & M. c. 11.

Persons relieved by the parish must have, on the uppermost garment, upon the shoulder of the right sleeve, a large letter P. and the first letter of the parish; otherwise one justice of the peace, upon complaint, may cause their allowance to be abridged or suspended, or commit the offenders to the house of correction for any time, not exceeding one and twenty days. Stat. 8 & 9 W. 3. c. 30.

Poor to wear badges, &c.

There are three sorts of poor people; viz. those who are poor by impotency, (which takes in the aged, decrepit, lame, blind, distracted persons, infants, &c.) 2. Those who are become poor by casualty, (which includes persons maimed, undone by fire, over-burdened with children,) and 3. Such as have made themselves poor by rioting, idleness, drunkenness, &c.

Three sorts of poor.

The first sort, that is the poor by impotency, the overseers of the poor are to provide a necessary relief and allowance.

Relieved.

The second sort of poor, which are those by casualty, if they are of ability and strength, are to be set on work by the overseers, and to be further relieved by them according to their necessities.

Employed.

The third sort, are not to be relieved, except in cases of great extremity, but are

Set at work, &c.

Poor provided for in present exigencies.

Overseers power in making rates.

And for what purposes.

Persons and things to be taxed.

Occupiers of lands, &c.

According to the yearly value.

to be sent to the house of correction, and there set at work to maintain themselves by hard labour. *Dalt. 157. &c.*

In present exigencies, overseers are to provide for poor, and to give them at their discretion money or victuals, &c. And they may be reimbursed by general order of justices in sessions. *Styl. Rep. 246. Keb. Rep. 336.*

Overseers have power to rate and tax every inhabitant and occupier of houses, lands, tithes, underwoods, mines, &c. to raise money for the relief of the poor, and provide a competent stock of flax, hemp, &c. to set the poor on work, and also for the putting out poor children apprentices; which rate being allowed by two justices of the peace, the churchwardens and overseers of the poor may levy the same by distress and sale; and for want of distress, the party may be committed to gaol till payment. *43 Eliz. c. 2.*

Every person, the clergy not excepted, must contribute to the relief of the poor. *2 Keb. Rep. 251.* And all things that produce an annual profit, may be taxed; tolls are taxable. *3 Keb. Rep. 540.*

Assessments should be made according to the visible estate the party possesseth in the parish where such assessment is made, and not elsewhere; the words of the act directing a taxation on the occupiers. *2 Bull. 354.*

The assessment shall be in proportion to the yearly value; and not the quantity of land, and as it arises by reason of the land in the parish, the farmer, or renter is to pay it,

it, and not the landlord; and the landlord is never assessed for his rent.

An assessment is either upon lands or goods; but a farmer being assessed for the land he occupies, shall not for his stock on that land, necessary for manure, nor the profits for which he has already been taxed; but for other stock he is taxable. And a clothier, &c. having an estate in lands, and a great stock of wares, may be taxed for both. *Blackerby's Cases* 203. &c.

Personal
estate taxed.

Overseers of a reputed parish, though it be really no parish, may make rates for their poor, and distrain for the non-payment of them. *Gro. Car.* 92. And the inhabitants of a village, having a chapel and parochial rights, shall not be taxed to the poor of the rectory. *Roll. Rep.* 160. Contra, if no parochial rights.

Taxing of
villages, &c.

If a parish extends itself into two counties or liberties, the overseers of the poor are to act in the whole parish, and not divide themselves; but the justices of the peace shall not intermeddle with that part which lies out of their jurisdiction. *Ventr.* 350.

Parish in
two coun-
ties.

But if there shall be a churchwarden and several overseers of the poor, some for part of the parish in one county, and others for the other part in the other county, and the rates are several, and accounts separate, they shall be taken as distinct parishes; the case of *St. Botolph without Aldersgate*, lying part in London, and part in *Middlesex*. *Raym.* 477.

How officers
to act.

When any parish is not able to maintain its own poor, two justices of the peace may

Power of
justices in
taxation.

tax any other parish within the hundred; and the sessions have power to tax the whole county. *Stat. 43 Eliz.*

The hundred or country.

But when the cause of taxation of other parishes, for inability of those wherein the poor are resident, ceases, the tax shall also cease; and the contribution lessen, as there shall be occasion. *Mod. 374. Lit. Rep. 73.*

Particular persons.

The justices of the peace may tax particular persons, and need not assess the whole parish, which is to contribute to the poor of another parish. *2 Bulstr. 352.*

Publick notice to be given of rates.

Churchwardens and overseers of the poor, or other persons having the care of the poor in every parish, township or place, shall give public notice in the church of every rate for the relief of the poor, allowed by the justices of peace, the next *Sunday* after the same shall have been so allowed; and no rate shall be esteemed valid and sufficient, unless such notice shall have been given. *Stat. 17 G. 2.*

6. 3 § 1.

The inhabitants may inspect and have copies.

The inhabitants of the parish may inspect the rates, paying 1s. and have copies of them, or any part of them, paying 6d. for any twenty-four names. *17 G. 2. c. 3. s. 2.*

Penalty.

Churchwardens or overseers, &c. refusing such inspection, or to give copies, forfeit to the party aggrieved 20l. to be recovered by action of debt, &c. *id.*

The form of a rate or assessment for the poor.

A. in Com. } A rate and assessment made this *Berks. H. 1 day, &c.* on the inhabitants of the parish of *A. aforesaid*, for and towards the relief of the poor there; for the year, &c. Or, being the first, or second farther rate for relief

relief of the poor of the said parish, for the year 1773, at 11. in the pound.

		L.	s.	d.
A. B. Clothier,	-	0	15	6
C. D. Yeoman,	-	0	5	6
E. F. Master,	-	0	17	6
G. H. Yeoman,	-	0	16	0

A. B. Churchwarden.

C. D. } Overseers.
E. F. &c. }

We whose names are hereunto subscribed, being inhabitants of the parish of A. aforesaid, have perused the above rate and assessment, and do hereby declare, that the several sums above mentioned are, by our approbation, rated upon the respective persons concerned; and that the same is an equal rate, according to the best of our judgments.

A. B. } Parishioners.
C. D. }
E. F. }

Memorandum, this day, &c. the above rate and assessment was ratified and allowed by us, two of his majesty's justices of the peace for the county aforesaid.

T. O.
L. C.
Westm. II. A rate or assessment of one shilling in the pound, made the day, &c. being Easter Tuesday in the year of our Lord 1773, for and towards the relief of the poor of the parish of, &c. in the liberty of the city of Westminster aforesaid, and county of Middlesex, for the said year 1773, by the churchwardens and overseers of the poor of the said parish,
L. 3

parish, by and with the assent of two of his majesty's justices of peace, for the said city and liberty, (of whom one is of the quorum) according to the statute in that case made and provided.

A. B. Churchwarden.

S. T.

B. C.

} Overseers of the poor.

If there be a select vestry, some of them, and such of the ancient inhabitants as are present at making the rate, sign here, } Inhabitants.

The above should be inserted in the first page of the collecting book.

After which begin a new leaf, in this manner:

Rents. Inhabitants names. Rates.

£. s. d.		£. s. d.
80 00 0	- <i>A. B.</i> Esq;	- 2 00 0
74 00 0	- <i>Mr. C. D.</i>	- 1 17 6
50 00 0	- <i>Mr. E. F.</i>	- 1 5 0

Agreeable to this method, set down the names of the several parishioners, the rents they pay, and the sums they are assessed, according to the rate; and then beginning a new page, you make a summary account of the rents and rates.

When the rate is confirmed, if any person shall refuse to pay, &c. it may be levied by warrant from two justices of the peace by distress; and if distress cannot be taken, two justices may commit the person refusing, till payment.

Rates to be
levied by
distress,

It

It has been determined, that by the Statute the poor's rates ought to be assessed monthly, and not quarterly, &c. for other-
Poor's rates how often to be made by statute.
 wife a man cannot remove in the middle of a quarter, without being twice rated; nor can a distress be taken by a general warrant made at the time of the rate, but there must be a special warrant; neither can it be taken for a quarter before it is ended, if the custom is to rate quarterly. 2 Salk. 332.

The justices at quarter-sessions will relieve those who are grieved by these rates or taxes. The churchwardens and overseers made a rate for the relief of the poor, which was confirmed by two justices; but the whole was rated upon the real estates of the inhabitants, and none on the personal; therefore an appeal was brought to the quarter-sessions, where the rate was quashed, and the overseers, &c. ordered to make a new rate upon the real and personal estates. 2 Salk. 483.
Relief against rates in the quarter sessions. Old rates vacated, and new ordered.

The churchwardens and overseers of the poor, within fourteen days after other overseers shall be appointed to succeed them, shall deliver to the succeeding overseers a true account, signed by them, of all sums received, or rated and not received, and of all goods, &c. in their hands, and of all things relating to their office, and pay and deliver over all sums and goods, &c. The account to be verified by oath before a justice of the peace. Parishioners paying 6d. may inspect the account, and paying 6d. for every three hun-
Overseers to deliver an account to their successors.

Overseers
dying or re-
moving.

Distress for
rates may
be levied in
another
county.

Overseers to
reimburse
their prede-
cessors.

Persons oc-
cupying a
house, out
of which
any person
has remov-
ed; or that
was empty
when rated.

Rates to be
entered in a
book and in-
spected by,
&c.

dred words, may have copies. Stat. 17. G.

2. c. 38. §. 1.

When an overseer dies, or removes, out of the parish, two justices of the peace may appoint another in his stead. §. 3. When an overseer dies, his executors, &c. shall within forty days deliver over all things concerning his office to some churchwarden or other overseer, and pay out of his assets what was due from him before payment of any other debt. §. 3.

The goods of any person assessed, and refusing to pay may be levied in any place in the same county; and if sufficient distress cannot be found there, then on oath before a justice of the peace of any other county, they may be levied in that county. §. 7.

The overseers who shall succeed, shall levy arrears, and reimburse their predecessors what they have expended for the use of the poor. §. 11.

Any person occupying any house, &c. out of which any other person assessed has removed, or which at the time of making of the rate was empty, every person so removing, and the person so coming into the same, shall pay to such rate in proportion to the time he occupied the same, under the like penalties of distress, as if he had not removed, or been originally rated; the proportion, in case of dispute, to be ascertained by two justices of the peace. §. 12.

There shall be copies of all rates entered in a book, to which all persons assessed, or liable to be assessed, may freely resort. §. 13.

Every

Every father, grand-father, mother, and grand-mother, and husband of the grand-mother (being able) are to maintain and relieve their children, which are deemed impotent poor, as the sessions shall order; under the penalty of 20 s. per month. 43 *Elix.*

Parents to relieve children, &c.

c. 2. But if the husband of the grand-mother hath no means or advancement in marriage with her, he shall not be obliged to keep the child. 2 *Bulstr.* 345. 347.

The husband's having ability, or his being of ability after marriage, will not make him liable to the maintenance of a poor grand-child, unless the grand-mother had ability sufficient; but if after marriage, lands descend to such grand-mother, and the husband enjoys them in her right, he shall be bound to keep the child.

A fortune in marriage with a grand-mother.

A father has been ordered to allow maintenance to the son's wife, he being beyond sea; and a father-in-law, has been adjudged within the meaning of the act 43 *Elix. Styl. Rep.* 283.

Father.

The children of poor, old, impotent persons, are at their own charges to relieve and maintain, (in the same manner as parents are to relieve their children) if such children are able, under the penalty of 20 s. per month to be levied by distress and sale, &c. 43 *Elix.*

Children of ability to maintain parents.

c. 2. The better to relieve poor impotent persons, and to prevent imposition of churchwardens and overseers, the parishioners of every parish are yearly in *Easter* week; or as often

Churchwardens, &c. to examine the register of the poor, and alter lists, &c.

often as it shall be thought proper, to meet and examine the register book of the poor; and the reasons for their taking relief, &c. and to alter the lists as they shall think proper. Stat. 3 & 4. W. & M. c. 11.

Persons exempted from wearing badges,

Those who receive relief are to wear badges, as before observed; except such child as shall be permitted to live at home, to take care of an impotent and helpless parent. This statute was made to prevent misapplying money raised for the poor, on idle beggars.

Cottages for the poor, on the waste.

Churchwardens and overseers of the poor, with the leave of the lord of the manor, in writing under hand and seal, or according to any order set down by justices of the peace in their general quarter sessions, may build cottages at the general charge of the parish, &c. on the waste, for habitations of poor impotent persons; and place inmates or more families than one in a cottage. 43 Eliz. 1. 2.

Taxes for erecting them,

The money to be expended in building these cottages, at the public charge of the parish, may be raised by a rate or tax, as before directed.

Apprentice serves his master, & is thought to be a person in another parish, thereby gains a settlement.

1 Sess. Ca. vol. 2. case 138. 2 Str. 1091. Mich. 8 G. 2. The king against the inhabitants of St. George Hanover-Square. Upon the appeal of St. George's against an order of two justices of the peace, whereby Alice Wheeler, a single woman, who was likely to become chargeable to the parish of St. James Westminster, was removed from thence to St. George's parish, as the place of her last legal settlement; and the sessions state the matter specially, that the said A. W. was bound by indenture

indenture a parish apprentice in the said parish of *St. George*, to *George Lester*, where she lived and gained a settlement, by serving the space of forty days under the said indenture; and that afterwards, and during the time of her apprenticeship she was by parol agreement, hired out by her said master *George Lester*, to one *J. Hall*, in the parish of *St. Mary le Bone*, and there lived and lodged above forty days, viz. for the space of one year and upwards. That the said *George Lester*, her master, received her wages from the said *J. H.* and found her clothes: On debate the question was, whether the said *A. W.* by her residence above forty days in *St. Mary le Bone*, gained a settlement in that parish or not? The sessions held the last term vice gained her no settlement, and consequently she was settled at *St. George's*. But the court quashed the order, and were of opinion, that there was no difference between the master's hiring her out, and her own act; and that it was like the case of a binding to *A.* and serving *B.* where it hath been always held to be a settlement in *B's* parish. And the order of sessions was quashed.

Upon a special order of sessions the case was stated, that an apprentice was bound to *H.* in one parish, but by agreement served *B.* in another parish, and the sessions settled him with *B.* and by the court, he gains a settlement in the last place. For a person may serve his master in another parish, and altho' he serves another man, yet it is by consent of his master, and the benefit ac-

crues

crues to his master. *Stran.* 554. *Cases of S.* 153. *Trin.* 9 *Geo.* 1.

Parter chief justice delivered the resolution of the court. This is an order for the removal of one *Terrer*, from the parish of *Holy Trinity* to *Shoreditch*; by which it appears, that *Terrer* was bound apprentice to one *Truby*, with intent that he should serve *Green*; which he did for the space of three years. And it has been said, that he being bound to *Truby*, who lives in *Trinity* parish, his settlement is there, and not in *Shoreditch*, where the service was. But we are of opinion, the justices of the peace have done right in sending him to *Shoreditch*, where the service actually was. It is exactly the same thing as if *Truby* had turned him over to *Green*, in which case there would have been no question, but he had gained a settlement in *Green's* parish. If the master removes out of one parish into another, the apprentice gains a settlement if he lives there forty days. The turning over an apprentice is like the assigning any deed. In this case *Truby* was only a trustee. There is a material difference between apprentices and other servants; for apprentices are not presumed to become chargeable, because the trade and mystery they learn is their estate. Therefore the order must be confirmed. *Stran.* 10. *Mich.* 3 *Geo.* 1. *Parishes of Holy Trinity and Shoreditch.*

A. who was bound apprentice in one parish, and by agreement served in another, his settlement was by an order of justices of peace, adjudged to be in the last parish. This order

was

was removed, and moved to be qualified for these reasons. The stat. 3 *Will. & Mary, c. 11*, restrains the privilege of gaining a settlement to the being actually bound an apprentice, and in the last parish there was no binding; consequently no settlement could be gained there. By a bare agreement the apprentice could not be turned over so as to gain a settlement in the last parish; for by the custom of *London*, the turning over must be before the chamberlain of *London*, otherwise it is not binding; and the bare verbal agreement between the master and apprentice, is not sufficient within the statute. 2 *Salk.* 479. and the act must intend a service with the person only to whom the apprentice was bound. By the court; the settlement in the latter place is good: if a master assigns over his apprentice, and the apprentice serves in pursuance of that assignment, he thereby gains a settlement; and the apprentice in the present case, whilst he is with his second master, is in effect serving the first; for he serves in pursuance of the first contract, and it is a continuance of his apprenticeship. Mr. Justice *Eyre*: An apprentice's settlement is where the apprenticeship expires; and it differs not whether he serves with one master or another; for still he serves by virtue of the first indenture. Mr. Justice *Fortescue*: The settlement in the latter place is well gained, not as an apprentice, but as a servant to the second master.

It was stated upon a special order, that an apprentice on the death of his master, was with

Apprentice
assigned
gains a set-
tlement.

Apprentice
assigned by a
master's wi-

dow gains a
settlement.

with his own consent turned over by the widow (who had taken no administration) to another master whom he served. And the court held it a good settlement in the last parish, as in the case of *Holy Trinity and Shore-ditch*, where *A.* was bound to *B.* but served *C.* all the while in another parish, and there gained a settlement.

Apprentice
settled
where he
lies.

Trim. 10. G. 1. Upon a special order, stating that *A.* was bound apprentice to *B.* and served five years in the parish of *St. John*, but had always lain in the parish of *St. James* with his father, the sessions adjudge it a settlement in *St. John*. And by the court, The order must be quashed; the serving without lying makes no inhabitation, which is necessary to gain a settlement in the case of an apprentice; and so it was held in the case of *St. Olave Jewry*, and in the case of *St. Mary Colechurch*.

A cobbler's
stall will not
gain a set-
tlement.

A. is bound to *B.* a cobbler, having a stall in one parish, he lies in another, and the boy in a third; the sessions adjudged the settlement where the stall is, because the service is there. By the court: The boy has gained no settlement in either of the three parishes; for the stall is not sufficient to give him one, the master lying in any another parish. Order quashed. *Sira. 51. East. 3 Geo. 1.* The king and the inhabitants of *St. Olave's Jewry*.

Apprentice
living forty
days in a pa-
rish, to
which the
master goes
gains a set-
tlement.

The case was stated upon a special order of sessions for the opinion of the court. That in the year 1702, *Richard Plower*, was bound apprentice to *John Emerton*, who was legally settled in *Ivinghoe*; that he served part of his time,

time, when the master went with all his family as a certificate-man to *Stone-bridge*, where he purchased an estate of the value of 60*l.* and the apprentice lived with him six months after such purchase, till the apprenticeship expired; and as the statute 12 *Ann.* c. 18. provides, that the apprentice of a certificate-man shall gain no settlement in the parish to which the master goes by certificate, therefore the judges adjudge the settlement at *Ivinghoe*, where the binding and great part of the service was. And by the court, the order must be quashed; for as the apprenticeship expired in 1709, the statute 12 *Ann.* is out of the case, not being made with any retrospect; and then the case is no more, than that an apprentice of a certificate-man lives forty days in *Stone-bridge*, which before that statute was enough to gain him a settlement. But had this been a case since the statute of 12 *Ann.* yet we think the settlement would lie in *Stone-bridge*, for according to the case of *Burclear and Eastwoodhay, East.* 5 *G.* 1. in *B. R.* when a certificate-man makes a purchase, he immediately ceases to be there in nature of a certificate-man, and becomes a settled inhabitant; so that laying the statute out of the case, in this view here is a service for six months as an apprentice, in a parish where the master was legally settled, which is more than sufficient to give a settlement to the apprentice. *Sira.* 265. *Hil.* 6 *Geo.* 1. the parishes of *Ivinghoe* and *Stone-bridge*.

It having been stated, that an apprentice was bound in the parish of *A.* and lived there
 Forty days
 inhabitation
 of, need not
 off

be all together.

Where the duty on apprentices is not paid, the apprentice gains no settlement.

How to order women delivered of children in the streets.

off and on for three quarters of a year. Exception was taken, that this was no settlement, since he might not inhabit forty days together. But by the court: that is not necessary, and the order for making it a settlement was confirmed. *Stran.* 579. The king and the inhabitants of *Cirencester*.

It was stated upon a special order of settlement that a poor boy was bound apprentice by indenture, and the master had 20 s. paid him; that he served three years; but the master had never paid the duty of 6 d. in the pound according to 8 *Ann. c. 9.* which says, that if the duty be not paid, the indenture shall be void. The case was referred to *Fortescue* justice, who went the circuit. He held it a settlement, because the master had six months to pay the duty in, so that during those six months a settlement was gained: and it should not be in the power of the master to defeat it by matter *ex post facto*. And agreeable to his opinion, the sessions held it a settlement. But upon debate in *B. R.* the order was quashed; for they said it was making the indenture good to a particular purpose, when the act of parliament had made it void to all intents and purposes whatsoever. So the order was quashed. *Str.* 903 *East.* 4 *Geo. 2.* Between the parishes of *Currenden* and *Laland*.

Whereas women wandering and begging are often delivered of children in parishes to which they do not belong, whereby they become chargeable to such parish: Be it enacted, That where any such women shall be

so

so delivered, and become chargeable, it shall be lawful for the churchwardens and overseers of such parish, to detain such woman in their custody, until they can safely convey her to some justice, who shall examine her and commit her to the house of correction, until the next general or quarter sessions, who may (if they think proper) order her to be publicly whipped, and detained in the house of correction, not exceeding six months; and upon application by the churchwardens or overseers where she was so delivered, the justices at such sessions shall order the treasurer of the county or district to pay them such sum of money, as shall be adjudged a reasonable satisfaction for the charges such place has been put to on such woman's account; and if such woman shall be detained and conveyed to a justice of the peace, as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither for want of other settlement, by a pass, by virtue of this act, but the settlement of such woman shall be deemed the settlement of such her child. 17 G. 2. c. 5. f. 25.

A woman an inhabitant of *Icleford*, being with child of a bastard, goes to *Great Milton* to get some necessaries from her relations; the officers of *Great Milton* procure an order from two justices of the peace to send her to *Icleford*; she is brought to bed at *Great Milton*. It was held by the court, that though in general a bastard is settled where it is born, yet in this case where there is an order

Bastard settled where born; but if born in *A.* pending an order of removal, it is no settlement in *A.*

order to remove the mother before she is delivered, the child shall be an inhabitant of *Ileford*. If a woman with child of a bastard is sent by order from *A* to *B*. she is brought to bed at *B*. then the order is quashed; the child shall be sent back to *A* with her mother. *8ess. Cal. vol. 1. 33. Mich. 10. Ann.*

Bastard of a
certificate-
man settled,
where born.

A man named *John Piffey*, being legally settled in the parish of *White Waltham*, where he had lived two years with a woman who was reputed to be his wife, went with a certificate from *White Waltham*, owning them as man and wife, into the parish of *New Windsor*, where they had six children. The man dies, and the woman swearing they had never been married, the justices adjudge the children to be bastards, and settled in *New Windsor*, where they were born. A motion was made to quash the order, because the evidence of the mother ought not to be admitted, and because the certificate was conclusive to the parish of *White Waltham*, to say they were not man and wife. For as no parish can refuse a certificate-man, so whatever is the import of that certificate must be binding, or it would be hard to get rid of such people. *Yorke, Contra.* It is a rule, that bastards are settled where born; and I believe it will not be pretended, that the bastard of a certificate-man can be sent back with him. But the only question will be, whether the legitimacy of the marriage could come in question at the sessions. As to the exception about the mother's evidence, I take it not to be material in this court, what evidence the sessions went upon.

upon. If the justices give an insufficient reason for their adjudication, that is no ground to quash the order. Their adjudication that such a place is the place of the last legal settlement, is conclusive to this court, though they shew in the face of the order an act which in law will not gain a settlement; for they and they only, are judges of the fact, and this court only declares the law arising from that fact. If a jury finds not only the facts, but the evidence of it; yet you put the evidence out of the case, and adjudge upon the fact only. The mother's evidence is good; for she is a stranger quoad the parish. *Salk.* 478. As to the certificate, that cannot enure by estoppel as a deed. The sessions are *quasi* a jury, and not bound by estoppels. 4 *Geo.* 53. 6 *Salk.* 276. Adjournatur; and the last day of the term the chief justice delivered the opinion of the court. Chief justice: We are all of opinion, that the certificate is conclusive to the parish of *White Wal-
tham*, and they are not to be admitted to dispute the validity of the marriage, therefore the six children being actually chargeable to *New Windsor*, must be sent back to *White Wal-
tham*. There is no doubt but the bastard of a certificate-man is settled in the place of his birth; for he is not such an issue as will follow the settlement of his father or mother, neither is he, his or her child within the intension of the statute, so as to be sent back with the parent. *Str.* 186. *Trin.* 3. *Ge.* 15. The parishes of *New Windsor* and *White Waltham*.

Birth only gives settlement to a child legitimate, where the father's settlement is not known,

Children born where the father is not settled, may be sent to his settlement after death,

Queen against the parish of St. Giles's, sess. ca. vol. 1. 18. Justices make an order to send an infant from the parish of R. to the parish of St. Giles; because it appears that notwithstanding the father was last settled at R. yet the child was born at St. Giles's. This order was confirmed at the sessions, but now quashed; for the place of the settlement of the child is with the father, and not the place where the child was born; but if it cannot appear where the father was settled, the place of its birth shall be the place of settlement.

Hill. 10 Geo. 1. St. Giles and Blackwater. It was stated upon a special order, that *William Chesterman* was born in St. Giles's, and put apprentice to *Everisy Blackwater*, where he served two years, till his master failed; that he then returned to St. Giles's, where he lived four years, and married a wife by whom he had two children, and died; that during the last four years he never lived in *Everisy Blackwater*; but as to the children, the court were divided; the chief justice and *Powys* justice inclining, that, having never been removed during the life of the father, they were settled in St. Giles's the place of their birth. But *Eyre* and *Fortescue* justices, thought the settlement to be in *Everisy Blackwater*, and that since during the life of the father they might have been sent thither, his death should not vary the case. Adjournatur; and this term it was again debated, and the chief justice changed his opinion, holding now that the settlement of the children was in *Everisy Blackwater*, and that the death of the father

would not hinder their being sent thither. Powys likewise came over; so that there were three of that opinion against *Raymond* justice, who thought that this case must often have happened, if children could be thus sent after the death of the father. They said the case of settling bastards and vagrants at the place of their birth was *ex necessitate*, but here was none. The order for sending the children to *Everfly Blackwater* was confirmed. *Sira.* 580.

Mich. 1 G. 1. between the parishes of St. George and St. Katherine, Southwark. A man settled in St. Katherine's, married, had six children born there, and died. After his death, the widow goes into the parish of St. George, with her six children, rents a house of 12 *l.* a year, and lives in it with her children four months. The question was, whether the children should be settled where their father was settled, or have a settlement with the mother in the parish of St. George: The whole court were of opinion, that the six children were settled in the parish of St. George, where the mother's last settlement was. And by *Parker* chief justice: There is no distinction between the settlement of children with the father or mother; for they are as much hers as the father's, and nature obliges her, as much as the father, to provide for them; so doth the law; and every argument that holds for their settlement with the father, holds good as to their settlement with the mother. The reason why children shall not gain a settlement, where the widow gains a settle-

Mother gains a settlement, after the father's death, children shall follow it.

a settlement only by intermarriage, is, because it is then not her family, but her husband's; and she cannot give the children any sustenance without the husband's leave. But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her, *Faley 254. Sess. ca. vol. 1. ca. 69. Mich. 1 Geo. 1.*

Wife sent to her husband's settlement, tho' she never lived with him there.

A wife is to be sent to her husband's settlement, though she never lived with him there. Note; the order was, Whereas *A.* was born in such a parish, we do therefore adjudge him to be last legally settled there; by Mr. Justice *Eyre* held well; birth being a good foundation of settlement, and we are not to imagine cases (as that his father or he might do some act to gain a settlement elsewhere) to make it ill. *Sess. ca. vol. 1. ca. 105. The King against the parish of Pinceborton, Oxford.*

Woman marries without a settlement, does not lose her own on his death.

If a woman who has gained a settlement marries a foreigner. Question, whether she shall not so far partake of the circumstances of her husband, as to lose her former settlement; for if she does not partake of the fate of her husband, it will cause a divorce?—The court seemed to think that the settlement is revived, being only in suspense during the life of the husband. The chief justice said in this case, if a woman having a settlement marries a man that has none, and the husband dies, she must be sent to her last legal settlement before marriage. It was

argued by *Serjeant Darnell*, that as her husband was not removable from the place where he was, that she was settled at the place where she was the last forty days. But by the chief justice: Where a person stays forty days in a place, whete they have a right not to be removed, that gains a settlement; otherwise, where they only stay in a place because they do not know where to remove them. Chief justice said in this case, that he did not know that a foreigner had a right to be maintained in any place to which he came, but that they might let him starve. Adjudged in *Hill. 2 Geo. 1.* that she should be sent to her settlement gained before marriage, though the order was affirmed as to her; but this order sending a child above seven years old from *St. Giles's*, which was the place of her birth, to *St. Margaret's* with the mother, which was her last legal settlement before marriage, was quashed, as to the child. *Sess. ca. vol. 1. 97 East. 2 Geo. 1.*

The King against Edwards, and others, Mich. Settlement
11 G. 1. The defendants were indicted at the sessions in *Essex*, and the charge against them in the indictment was, that they being overseers in the parish of *A.* and there being one *B.* a poor lame and infirm woman in such parish, they had given a small sum of money to a poor man of the parish of *C.* to marry this *B.* and by such contrivance, had conspired to settle *B.* in the parish of *C.* the settlement of her husband. Mr. *Serjeant Baines*, moved to quash this indictment, as there was nothing criminal alledged therein.

The

The giving a poor woman a portion, and marrying her, was a good act, and could not be punishable as a crime. Secondly, he insisted, that if this was a conspiracy in the defendants, it was not within the jurisdiction of the sessions. Mr. Serjeant *Comyns* on the other side: A base contrivance to act to the prejudice of another is criminal. A conspiracy is indictable, though no act be done in pursuance of it. If this had been a conspiracy to put a charge upon a single person, it had been indictable; much more so where the conspiracy is to put a charge upon a whole parish, as in this case the defendants have done; and insisted that the sessions had a jurisdiction in offences of this nature, by statute. *Chief Justice*: Indictments for conspiracies are not allowed to be quashed, where the thing conspired is in it's own nature criminal. But where it plainly appears by the indictment, that the act which was done to the prejudice of another was a lawful act, the court hath a discretionary power to quash. If it be doubtful whether the act done be criminal or not, yet if it be done with an ill intent or design, we will not quash the indictment. I am of opinion the indictment in this case ought not to be quashed; but the defendants must be left to demur or plead to it, as they think proper; to which Mr. Justice *Powys* agreed. Mr. Justice *Fortescue*: It must be governed by the course of the court in these cases; and I never knew any indictment for so high an offence as conspiracy, quashed upon motion, though the act

act was lawful, which is conspired, yet if the end of it be unlawful, it is a conspiracy and indictable. He seemed to think the sessions had a jurisdiction in indictments of this kind, and said the commission of the justices gave them a jurisdiction. Mr. Justice *Raymond*: Quashing is an act of favour, and wherever the crime charged is of an high nature, the court having a discretionary power, will not quash, but put the defendant to demur, or plead as he can. And by all the court; the motion to quash the indictment was denied. Afterwards in *Trinity* term following, the defendant demurred to this indictment; and had judgment, because it was held not indictable offence. *Sess. ca. vol. 1. 265.*

The King against Parkins overseer of Studley: An information unless cause, for forcing a marriage. A single woman of *Studley*, being big with child of a bastard, was sent back to *Studley*. *Parkins*, overseer of the poor of *Studley*, threatened, with all the severity of the law, to force her to marry a stranger of another parish, against both their consents, he giving five guineas to the husband, and keeping him in liquor. *Sess. ca. vol. 1. 176. Hill. 6 Geo. 2.*

A certificate-man married a second wife whilst the first was living; the parish who gave this certificate, acknowledging the second wife, are not only obliged to maintain the first, but also the second wife and their children by him. *1 Bur. sett. ca. 253. 2 Stran. 1233. 2 sess. ca. No. 206. f. c.*

The order was specially stated for the judgment of the court. J. S. being an unmarried servant marrying does not

destroy the
settlement.

married person, and having no child, served *A. B.* from *March 1725*, to *March 1726*, and in *September* intermediate he married, and served out his year. The question was, if this was a good service to intitle him to a settlement? The court held it was good; and to be unmarried at the time of hiring is the only thing necessary, in order to get a settlement by the service, and that the service is not dissolved by the marriage. Another exception was taken: it is said in the order he was last legally settled; but this was not allowed, and the order of removal was quashed. *Seff. ca. vol. 1. 121. Mich. 1 G. 2. The King against the inhabitants of Sutton.*

Two hirings
for half a
year, and
service for a
year, does
not gain a
settlement.

Between the parish of Dunsfold and Ridgewick, Mich. 9 Ann. It appeared one was hired a servant to live at *Ridgewick*, for half a year, and after that was hired again for another half year, with the same person, and thereupon served a year in one continued intire service, but by several hirings: *Sir Peter King* urged, that here was a service for a year, and a hiring for a year, though by several contracts; and that the hiring need not be by one intire contract, and that so it had been held, and he cited a case where *H.* took a tenement of *5l.* a year, and also another tenement of *5l.* a year, and occupied, both; and this was held to be a renting of a tenement of *10l. per annum.* And by the court: It ought to be one intire contract, and one intire service; the one being required by the statute as well as the other. If a service and several contracts shall gain a settlement,
one

one that serves by the month, by the week, or by the day, may, if he continues a year, gain a settlement: one may hire by the day for charity; but there is danger of being chargeable in hiring such a person by the year; for such a term as a year, it is not supposed a master would have one, unless he was able of body, and so not likely to become chargeable. Also the chief justice observed, that by the statute of *Eliz.* the retainer of servants was for a year; that statute 14 *Car.* 2. requires forty days stay, and that this is as inconvenient; for by gaining a settlement in forty days, servants grew insolent; and that these later acts, viz. 3 & 4 *Will.* 3. c. 11. and 8 & 9 *Will.* 3. c. 30. do but turn the forty days service into a year's service, and the hiring to be a retainer for a year, according to the statute of *Eliz.* *Salk.* 535.

E. I. An. Farrington and Witty. A servant was hired for a year, and served half a year of the time, and married. The question was, Whether the justices, on complaint of the overseers of the poor, could make an order to recover him to the place of his last legal settlement? By the court, The contract between the master and servant was not dissolved by the marriage; and even admitting it might be dissolved by an order made on complaint of the master, yet without that, and upon complaint of the officers only, it could not be dissolved. And the marriage doth not hinder the service; the contract

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General
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continues; and if the man performs his service, he gains a settlement. 2 Salk. 527.

A boy aged 17 years, born in *Wincaunton*, offered himself to serve *Samuel Williams* of *Charlton Horethorne*; who hired him to serve him in husbandry, and agreed to give him meat, drink, washing, lodging, and clothes when wanted; but no particular time was agreed on, and the pauper apprehended his master might have been off, or he might have left him, at their pleasure: nevertheless there was no agreement for that purpose. The boy continued and served him in *Charlton Horethorne* two years and an half. By the court: He gained a settlement there, by this service, a general hiring for a year. And there are no circumstances in this case, to shew an intention to the contrary, or to vary it from the general rule. The mere apprehension of the pauper doth not do it. *Burrow's settl. cas.* 299. H. 24 G. 2. *Wincaunton and Crediton*.

A person being hired from *May-day* to *Lady-day*, then from *Lady-day* to *May-day*; and so on again in like manner for another year. The question was, Whether this gained a settlement? And the court were of opinion, it did not; for they said the hiring must be for a year. *Foley* 134. M. 12. An. *Horsbam and Shipley*.

E. 33 G. 2 *Handley and Berwick St. John's*. The pauper, settled at *Handley*, happening to meet Mr. *Jones*, head keeper of *Rushmore-lodge* in the parish of *Berwick, St. John*, who had then lately parted with one *Edward Hill*, who

who had been for many years one of his servants or under-keepers, at the wages of 3*l*. a year and a keeper's livery, besides meat, drink, and lodging; the said Mr. Jones addressed the pauper thus, Do you like the life of a keeper? Which being answered in the affirmative, he said further, Then go into Ned Hill's place, and you shall want no encouragement. Accordingly he went, and continued in the service for three years, and received three years wages. The question was, Whether this conversation amounted to a hiring for a year, so as to gain a settlement? It was urged, that a hiring generally is hiring for a year, and that the law knows no other servant but one for a year; and that this has an express reference to Hill's service, which was for a year. On the contrary, it was argued, that here was no actual hiring at all; and none can arise by implication, from the bare service alone: and that the reference to Ned Hill's service, relates to Hill's work only, and not to his contract. By Lord Mansfield and the court: This man served three years, and received wages accordingly. But it was objected, that he was never hired at all. It is admitted, that if he was hired at all, it would by law be a hiring for a year. And upon the state of this conversation, it is a clear hiring; for Hill was a hired servant. And therefore, it was adjudged, that the pauper thereby gained a settlement. *Burrow, Mansfield. 988. Burrow's settl. cas. 502.*

John Evans was hired with Ralph Trubshaw of Haughton, from Asb-Wednesday till Christ-
mas, Hiring for eleven months.

mas, and served him all that time. Then he went to his father in *Ranton*, and staid with him for about a week. Then he returned to *Ralph Trubshaw*, and was again hired with him for eleven months, and served him the eleven months: He then left the said *Ralph Trubshaw*, and took his clothes with him, and was absent one week. Then he returned again to the said *Ralph Trubshaw*, and was hired with him for eleven months, and accordingly served him; and then left that service, and went to his father in *Ranton*, and staid about one week. Then he served one *John Sutton* of *Houghton* aforesaid, for about three weeks; then returned to *Ranton* aforesaid, and staid for about a week: and then returned to the said *John Sutton*, and hired with him for eleven months, and served within a fortnight or three weeks of the last eleven months, where, by agreement with the said *John Sutton*, to avoid a settlement in the parish of *Haughton*, he left him, took his clothes, and went into the parish of *Gnosall*, and there continued about a week; he then returned to the said *John Sutton*, and continued with him so long as to make up his service of the last eleven months; and three weeks before *Christmas*, the said *John Evans* hired himself again to the said *John Sutton*, for another eleven months, and served him from that time till within three weeks of *Michaelmas* following, and then came away and married. The question was, Whether these several hirings were sufficient to gain him a settlement in the parish of *Haughton*? *Parker Ch. J.* said, this was

was an apparent fraud, and very different from all other cases. *Pratt J.* said, I doubt we must take the law to be, that there must be a hiring, and a service for a year: Here the sessions have found it specially, and there is neither hiring nor service for a year: And suppose a man that lives in a parish incumbered with poor, hires a servant for eleven months only, purposely, by way of caution, to prevent a charge upon the parish, the intent is lawful, and how can such hiring and service gain a settlement? And as to the matter of fraud, if there is any, the justices of the peace are judges of that. *Eyre J.* was of the same opinion of *Pratt J.* *Powis J.* being absent. Afterwards, in *Easter* term, after long debate and consideration, the opinion of all the court was, that these hirings and service in the parish of *Haughton* were not sufficient to gain a settlement: and though such hirings defeat settlements, yet if that is a mischief, it is to be remedied by the legislature, and not by the court, which is to judge on the law as it stands. *Fol. 137. Str. 83. 10 Mod. 392. T. 3. G. Ranton and Haughton.*

The King against South Cerney. East. 5 G. 2. Order of two justices for removing a poor person from *South Cerney* to *Cottesbourn* in *Gloucestershire*; on appeal the sessions discharged that order, and stated the case specially. That at *North Leach* are annually held two mops or meetings for the hiring of servants, the one on the *Wednesday* before *Michaelmas*, the other on the *Wednesday* after; that

A person hired the *Wednesday* after *Michaelmas*, to serve to *Michaelmas* following, not a settlement.

the pauper was hired the *Wednesday* after *Michaelmas*, to the parish of *Cottesbourn*, to serve to the *Michaelmas* following, which he did accordingly, and received his wages. Mr. *Stevens* moved to set aside the order of sessions, because upon the case specially stated, a sufficient settlement appeared, the person being hired according to the course and custom of the country, at the usual times for hiring servants for the year following; he said he only contended for it on the custom of the country; but it was ruled by the court, that this is no settlement upon the face of it; there must be a hiring for a year, and that cannot be dispensed with, and refused even a rule to shew cause. *Self. cu. vol. 1. 156. East.*

Hiring for a year, with leave to be absent during the harvest month.

A man was hired from *Michaelmas* to *Michaelmas*, for 5*l.* wages with liberty to engage for the harvest month, to any other person. He served till the harvest month, and then hired for that month, and received wages for it. During that month, he brewed for his master, and lodged in his master's house at *Saundridge* during the whole year; and served out the remainder of his time, and received his 5*l.* wages. By the court: This is in effect only hiring for eleven months; and the harvest month is the principal month of the year. It is safest to keep to the statute. If we allow this, we shall not know where to stop. *Burrow, Mansfield. 425. Burrow's Settle. Cas. 439. H. 31. G. 2. Bishop's Hatfield and Saundridge.*

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H. 5 G. Coombe and Westwoodhay. Michaelmas-day being on Thursday, a person was hired upon the Saturday following, to serve till Michaelmas: And it was held to be insufficient to gain a settlement, being not a hiring for a year. Sir. 143.

It was stated upon a special order, that a maid was hired for a quarter of a year, and if she and her master liked each other, she was to continue the whole year, and have 3*l.* for her year's wages; that she staid the year out, and had her 3*l.* And this was held to be a settlement. *Sira. 950. Trin. 6 Geo. 2.* Between the parishes of *Lidney and Stroud.*

A person hired conditionally gains a settlement.

It was moved by Mr. *Proctor* to quash an order of sessions confirming that of two justices of the peace, but specially stated for the opinion of the court. The case was, that *Diana Brooks* was sent by order of two justices of the peace, from *Cheping Wycombe* to *New-Windsor*, as the last place of her settlement. *Windsor* appealed to the sessions, and the order was confirmed, stating that the said *Diana Brooks* had hired herself to live with one colonel *Merrick*, at *Thorp* in *Surry*, to go a month on liking at five pounds a year wages, but to part on a month's wages or a month's warning, on either side. She continued under this agreement a year and three quarters in this service, and her wages were paid quarterly. It was insisted, that on the state of this case, here was a hiring and a service for a year, and that consequently she had gained a new settlement at *Thorp*, and was ill removed to *Windsor*, and a rule was

Hiring and service for year, though agreed to part at a month's warning, a good settlement.

made to thew cause; afterwards the court quashed the order, adjudging a good settlement at *Thorp*. *Sess. ca. vol. 2. 183. Hil. 8 Geo. 2 Cheping Wycombe against New-Windsor.*

Hiring with
one's father.

Jessop and Missenden. T. 13. An. Sarah Barnes lived with her father a year as a hired servant, in a cottage upon the waste, for 10s. a year, besides what she could get by her service and labour. And whether she gained a settlement thereby, was the question. And the whole court held she did; there is no ground of fraud; for it was to live with her father, who might be grown old. *Fol. 142.*

Agreement
to part on a
month's no-
tice does not
destroy a
hiring for a
year.

One who was settled in *Alborton*, hires himself into *Barton*, for one year, at 4s. wages, and either master or servant to be at liberty to determine the contract at the end of any quarter, upon a month's notice. And it is stated, that he served the year out, but at the time of the hiring the pauper declared, he made the agreement in that manner, to prevent losing his former settlement. And upon this case the two justices and sessions held it no settlement in *Barton*. But the court on debate quashed both the orders; for this is the common sort of hiring for a year, with an intention to stay together, as in fact they did; and if this should be determined not to gain a settlement, it would overturn great numbers of settlements that subsist on such hirings. *Str. 1182. Hil. 16 Geo. 2.* Between the parishes of *Alborton* and *Barton*.

Hiring and
service for a
year a good
settlement,

East. 1 Geo. 1. The king against the inhabitants of Brightwell. An hiring three weeks after

after *Michaelmas* to *Michaelmas*, and then an hiring for one year, and a service for eleven months, adjudged a settlement. *Overton*, and *Stirington*, 10 Will. 3. Note; the chief justice said, that if there was a service for a year, on a hiring from week to week, and then a hiring for a year, and serving for forty days, that he should adjudge that a settlement. The reason is, because till the last statute was made, an hiring for a year, and forty days service made a settlement, in regard that the hiring for a year shewed that the person was not likely to become chargeable, for that he was able to work, &c. therefore forty days is a good settlement to an apprentice in respect of his skill and art, by which he is supposed to become chargeable; so a parishioner that has paid parish dues, or served in a parish gains a settlement by forty days, because he is supposed a person of substance, and not likely to become chargeable, who is so called upon; but the late act requiring a service for a year as well as an hiring, we think it sufficient if the words be answered, considering this with the design of the former statute. *Seff. Ca. vol. 1. 87.*

One *Martha Brewer* was hired to *William Wake* in the parish of *Stroude*, for a quarter of a year; and if her master and she liked each other, she was to continue a year, and to have 40 s. for her year's wages. In consequence of this, she entered into the said service, and continued therein one whole year, and received the said wages of 40 s. It was argued, that as it was in the election of either

Hiring conditionally.

party, during the first quarter, whether she should continue or not, she consequently could not be originally hired for a year. But the court held this conditional hiring to be a good hiring for a year; as the master and she did like each other, and a year's service was actually performed under it.

One *Ralph Harrison* was hired for a year to *Thomas Barlow of Barton*, at 4 l. a year wages, payable quarterly. And it was agreed between them, that either of them should be at liberty to determine the contract, at the end of any quarter of the said year, on a month's notice. But no such notice was given by either; and the servant continued in his said master's service the whole year. The servant declared at the time of the hiring, that the reason of the said hiring being made determinable at the end of every quarter, was, that he would not be hired so as to lose his former settlement. But by the court unanimously and clearly, This is a good settlement in *Barton*. *Burrow's Settl. Case*.

203. *H. 16. G. 2. Atherton and Barton*.
E. 13 G. 2. Wandsworth and Putney.

Hiring by
 implication.

A boy came to live with Mr. *Falkner*, without any hiring; after which his master told him, if he staid a year and behaved well, he would give him a livery and wages the next year. He lived there a year and four months, and received a guinea and a half wages. The court inclined to think, that this was a conditional hiring, and that the boy's service was an assent in fact, and gained a settle-
 ment.

ment, but referred the matter back to the sessions to be more fully stated. *Sess. C. v.*
2. 1888.

A person lived with her grandmother four years, on an allowance of meat, drink, washing, and lodging. But there appearing no contract betwixt them, but that the girl might have left her grandmother at any time, he was adjudged not a hiring within the statute. *Sess. C. v. 2. 120. M. 13. G. Gregory Stoke and Pitminster.*

Service where no contract appeared.

Two justices of peace, by their order of 22 Sept. 1727, removed *Thomas Edmonds* and *Elizabeth* his wife from the parish of *Asbenden* in *Bucks* to the parish of *Synhoe* in *Northamptonshire*, as the place of their last legal settlement. From which order the inhabitants of *Synhoe* appealed to the next quarter sessions held for the county of *Bucks*, 5 October 1727, where, upon hearing the order of the two justices, it was confirmed; in which order the fact was stated specially, to the intent a *cartiorari* might be brought, to remove the orders into the King's Bench, that the opinion of that court might be had thereupon. And the fact specially stated was this, *viz.* That the said *Thomas Edmonds* was about fourteen years since hired for a year to *Abraham Wroughton* at *Synhoe*, and served him that year, and received his year's wages, and afterwards at *Michaelmas* 1725, went to *Mr. Thomas Potter* at *Bisfister* in *Oxfordshire*, to be hired, who told him he would not hire him then, because he expected a man-servant in three weeks; but if he would supply the place

Two several hirings; one for three quarters, and another for a whole year, held a good settlement, tho' the service was not pursuant to the hiring.

place of such man-servant till he came, then he the said *Thomas Potter* would pay him for his time: whereupon *Thomas Edmonds* entered into the service of *Thomas Potter*, and lived there till near *Christmas* following, and then was hired to him, and served him at *Bisfister* till *Michaelmas* then following; and then at *Michaelmas* 1726, he was hired at *Bisfister* aforesaid for a year to his said master *Potter*, and stayed in such service till the *Midsummer* following, and no longer. These orders being accordingly removed into the King's Bench by *certiorari*, it was argued by Mr. *Lee* for the defendants, that the order ought to be quashed; the said *Thomas Edmonds* appearing to be last settled at *Bisfister*; because though the statute requires a hiring and a service for a year, it does not require the hiring and service should be under the same contract. Mr. *Reeve*, *e contra*, argued, that it did not appear *Edmonds* was settled at *Bisfister*, because he insisted he ought to be hired for a year, and serve that year: and he said, it had been held between the inhabitants of *Rudwick* and *Dunsfold*, that if a poor man is hired for half a year, and serves that half year, and then is hired to the same master for another half year, and serves that also, that would not make a settlement. But the court held, these hirings and service did make a settlement; for he was hired for a year, and served a year. And the orders were quashed. *Lord Raym.* 1511. 1 *Geo.* 2. The King against the inhabitants of *Aynhoe*.

Between

Between the parishes of *Beecher* and *Leicester* *Steff, East. 17 G. 2.* The pauper was hired to a blacksmith for a year, at 3*l.* per annum, to be paid when the servant wanted it. During the year, the master gave him leave to work with another smith for three days, with a second for a week, and with a third for a fortnight, and agreed the servant should have the benefit of it; he then returned, and staid out the year, and the master, by consent of the servant, deducted the proportion of wages for the time he was absent; and upon this state of the case the sessions held that no settlement was gained, the first contract being dissolved. But by the court: the order must be quashed, for this is not a dissolution of the contract, but a licence to be absent, and both parties considered it in that light, by continuing together to the end of the year. The accelerating the payment of wages for the convenience of the servant, which is frequently done, without a particular agreement, makes no alteration. *Stra. 1207.*

Absence of a servant by master's permission does not destroy a settlement.

A woman was hired for a year, and served half a year, when the master died; the executor, (who lived in another parish) asked the servant if she would serve out the year with him; she did so; and the court held it a settlement in the executor's parish; for the last service is not to be considered as a new agreement, but a continuation of the first. *Stra. 1164. East. 15 Geo. 2.* between the parishes of *Ladock* and *St. Ennidore.*

Serving out the year with an executor in another parish, a settlement.

Mich. 9 G. 1. between the parishes of *St. Peter, Oxon,* and *Chipping Wycomb, Bucks.* Upon

Hired servant settled where the service is.

Upon a special order of sessions, it appeared, that the master of the *Oxon* stage coaches hired a servant for a year to stay in an inn at *Wycomb*, where the coach baited, and take care of the horses; he lived there the whole year; but as the master lived all the time in *Oxford*, the sessions adjudged the settlement of the servant to be with him. And by the court: The order must be quashed; for the settlement is gained by the service, which was in *Wycomb*; and it would be hard to make it a settlement in *Oxon*, when the officers there had no power to remove him; the officers of *Wycomb* might have removed him, if they had pleased, but as they did not do it, they must provide for him. *Sira*, 528.

Servant hired for above a year, and having served it, and resided in the same parish with his master, gains a settlement.

A. kept a glass-house in the parish of *Whitechapel*, and hired *B.* for five years, to work at this glass-house, at the rate of 10 s. a week. *B.* never lodged with *A.* in his house any part of the time, but at another house in the parish; and on a dispute where *B.* should be settled, the justices adjudged his settlement to be in the parish of *Whitechapel*; which order being removed by *cartiorari*, Mr. Serjeant *Hawkins* moved to quash it, because this was not such a service as was intended by the statute of 3 *Will. & Mary*, c. 11. for as this man had never lodged in his master's house, he could not be considered as one of his master's family; and therefore was not such a servant as could gain a settlement by the statute. By the court: The order is good, and *B.* has gained a settlement in *Whitechapel*; for being hired to serve above one year, and hav-

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ing served and resided in the same parish pursuant to such hiring, he hath fully complied with the statute, and it is not material whether he lodged at his master's house or at any other house, if he be within the same parish. Order affirmed. *Sess. Ca. vol. 2. cap. 114.* The king against the parish of *Whitechapel*.

The person to whom a pauper was hired lived at *Goring*, and kept a boat which navigated from *Goring* to *London*, and plied at several places specified in the order; but the pauper was not forty days in the whole year at the parish of *Goring*, but served out the year on board the boat; and the question was, Whether the hiring and service would make a settlement at *Goring*? Mr. *Reeve*, to quash the order, said, That there was an hiring and service, and notwithstanding the words, "that he had not served forty days in the whole year," must be meant forty days together, which is not necessary; he admitted, that in the case of a boy hired to serve on ship-board, it had been held not to gain a settlement, but that was, because no settlement in the parish. Lord Chief Justice said, He could not distinguish the case at bar from the case last mentioned. Mr. Justice *Page*: The reason why parishes are made liable is, because they are presumed to gain by the party's service; therefore the order of removal and the order of sessions were confirmed by the whole court. *Sess. Ca. vol. i. 327. East. 4 Geo. 2. Goring parish against Molesworth parish.*

A servant

Servant going to sea with his master's leave, and finding a substitute, is settled.

A servant-man was hired for a year, during which, with his master's leave, he went to sea upon the herring fishery, but hired another person to do his work in the mean time: he returned at the end of three weeks after the expiration of his year, settled with his master, and received his whole year's wages. This the sessions held was not a service for a year; but the court held it a settlement; saying, he was to be considered all the time as in the service of his master, and the person he found to do his work was his servant, and not the master's; wherefore the order was quashed. *Stra. 1232. Trin. 18 Geo. 2. Between St. Peter in Sandwich, and Goolaston in Kent.*

Consent to part, discharges the service,

Upon motion to confirm an order to remove *Hugh Pool* and his wife from *P.* to *B.* The fact was, that he served one year in *P.* and after was hired to serve a year in *B.* except three weeks, and then being a covenant servant, parted with his master by consent, he deducting 6s. for the three weeks; his wages being 3l. per annum. It was urged, that as a covenant servant, he could not be discharged by consent, and therefore continued a hired servant for a year. Besides, that this was a fraud to prevent the settlement, since it did not appear that he grew sick, or less able to serve than when he was hired, and notwithstanding, he was discharged. *C. Justice:* There is no difference between a covenant by deed or by parol, as to a settlement; for though the consent does not discharge the covenant,

There is no difference between a covenant by

venant, yet it does the service, and the act turns upon the service. His master deducting 6s. his wages being but 3l. shews that there was no fraud or temptation to the man to go; but it appears to be the man's choice, and that the master would have kept him. Nothing can make this a settlement, unless there be a fraud apparent or expressed. Order quashed. *Sess. Cas. vol. i. 71. Mich. 1 Geo. 1.*

Pawlet against Burbam, Eastland and Westbury. Trin. 8 G. 1. The fact was stated specially, on an order of sessions, that a manservant was hired for a year, and the day before the year expired, the master told him, that to prevent his gaining a settlement in that parish, he should go away immediately, which the servant refused to do, insisting that he would serve out the year; whereupon the master turned him out of doors. And the court held this to be such a fraud in the master, as should not prevent the settlement of the servant. *Sira. 526.*

Mich. 19 Geo. 2. Crocombe and St. Cuthberts. A servant was hired for, and served a year in *Crocombe*. He afterwards continued to serve without any new agreement for a quarter of a year, when the master removed into a house in *St. Cuthberts*, where the servant continued with him for half a year, and then married. The question was, Whether this was a settlement in *St. Cuthberts*, within the reason of those cases that have held the settlement to be gained where the last forty days service was? And the court held it a settlement there; for it is still a continuing in the same

deed or by parol, as to settlement, for the consent discharges the service.

Turning the servant out before the end of the year, doth not prevent the settlement.

Servant removing with his master in the second year, gains a settlement.

same service within the meaning of 8 and 9 Will. 3. c. 30. though there is no new agreement. And upon the whole, there has been between this master and servant a hiring and service for above a year. *Sira. 1240.*

Same service, but not with the same master.

E. 4 G. Ivinghoe and Solebury. A person being hired for a year to one Knight, who rented a farm in Ivinghoe, lived with him half a year. The master lets the farm to one Smith, and the servant lives the remainder of the year with Smith in the farm, without any words passing about dissolving the contract with Knight, or making any new contract with Smith. At the end of the year, the second master paid him his wages. The question was, If this shall be deemed the same service, so as to gain a settlement? By Pratt, Chief Justice, and the court. This is a good settlement. If a master command his servant to live with another for a certain time, it is a service to the first master; and here being no new contract, it is carrying on the service of the first master. And the subsequent master paying his wages, did not alter the case; for the contract not being destroyed, he might have brought an action against the first master. *Sess. C. v. 9. 121. Cases of S. 109. Str. 90.*

A servant being hired for a year; and in the year's service his master permits him to go and see his mother for one day, and he stays three days, and then comes home again, and his master takes him into his service as before. It was objected, that his staying to see his mother without leave was a desertion of the service,

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service, and the time he stayed away takes so much off from a complete service for a year. But by the court: This will not prevent the settlement; for the master's taking him again is a purgation of the offence, and no interruption of his service.—In the same case it was stated, that the servant for six days was sick, and incapable of any service: And it was objected, that therefore he could not gain a settlement, because it was to be acquired only by a service for a year; but he did not serve for six days, therefore there wants so much of a service for a year. But by the court: A servant that lies thus under the visitation of God, which befalls him not thro his own default, is all the while in the service of his master; and if this exception were to be allowed, it might prevent all the settlements in the kingdom.—Another circumstance in the same case was this: The servant, three or four days before his service expired, desired leave of his master to go to a fair, to hire himself into another service. His master refused, telling him, that if he went, he should not come into his house again. The servant went notwithstanding, and did not return until the time of his service was expired. By the court: This is nevertheless a settlement. The request of the servant is a reasonable request, and the law will not permit a master to shew himself inhuman to his servant. A master cannot turn off his servant two or three days before the year expires; if he doth, the service in point of law continues, and he gains a settlement notwithstanding

standing. *Cases of Settl.* 129. *Str.* 423.
East. 7 Geo. King and Islip.

Mich. 9 G. 2. The parishes of *Syford* and *Castlecurch*. A man was hired for a year, which he served till the last twenty-one days, when he went away, with his master's leave, and staid till after the year was up, at which time he returned for his clothes, and was paid the whole year's wages: And on consideration, that if they once allowed this absence for twelve days, at the end of the year, (which differed from an absence in the middle of the year, which was purged by taking him again) they should not know where to stop, it was determined that he gained no settlement. In this case, the servant went from his service before the year was out, and the master consented to it; which is a plain determination of the service within the year. *Str.* 1022.
Burrow's Settl. Cas. 68.

Order made
 upon due ex-
 amination,
 good.

Hill. 10 G. 1. Mungerhanger and Warden.
 An exception was taken to an order of the justices for the settlement of the poor; for that it is said to be made upon due examination, without saying that examination was taken upon oath. And upon an appeal from this order, the quarter-sessions quashed the order for this irregularity, as they held it; and now the order of sessions, which quashed the first order was moved to be quashed, upon a suggestion that the order of two justices of the peace was a good order; and the order of sessions was quashed. For by the court: It is enough to say, the order was made upon due examination, without saying upon oath.

the statute directs the examination to be upon oath; for where it is said in an order to be made upon due examination, it shall be intended to be upon oath according to the statute. And in the case of the inhabitants of *Cirencester* this term, it was held sufficient to recite in the order, that upon due examination of the party, and upon his affirmation, &c. without adding that the party was a quaker; and that living forty days successively was not necessary. And Mr. Justice *Fortescue* said, that living forty days off and on, is making the case stronger, than living forty days together in a parish. *Lord Chief Justice*: Where an order is made by justices of peace, and that order is quashed at the quarter sessions, and after the order of sessions is quashed in this court, the original order shall stand, and the justices have no jurisdiction about it. *Seff. Ca. vol. 2. 40.*

The forty days inhabitation need not be all together.

Mich. 13 G. 1. The King against Seaton Tongat and Warpelfton. Motion to quash an order of sessions, which set forth the matter specially, and adjudged a man, who was a tenant, and paid four pence to the poor on account of his tenancy to have gained a settlement, when the pound rate was charged entire upon the landlord. Upon the rule to shew cause, it was said, the premisses were demised, and a deduction taken for that part, according to the proportion of the rate imposed upon the whole. The overseers cannot charge; the charge is the effect of the rate, and the whole is charged as being in the hands of the landlord. He shall not get a
I settlement,

Man rated to the poor, and the tenant pays the money, the tenant does not gain a settlement.

settlement, though he pays a proportionable rate for a part rented of the owner; and the rule was made absolute to quash the order of settlement. *Seff. Ca. vol. 2. 122.*

Paying gives
no settle-
ment, if not
rated.

Payment to the poor does not give a settle-
ment, unless the party was rated: for the
rating is the act of the parish, and not the
other. And the settlement arises from the
parish's giving that evidence of their being
satisfied of his ability. *Str. 1023. Mich.*
9 Geo. 2. The King and Bouinden.

Payment to
the land-tax
held to gain
a settlement.

Hill. 9. G. 2. the King against Bramley.
Two justices make an order to remove *J.*
Clofe, &c. from *Armley*, another township in the
same borough, to *Bramley*, who appeal, and
the sessions confirm the order and state spec-
ially, that the said *John Clofe*, after his settle-
ment in *Bramley*, removed with his family,
and inhabited and farmed lands at *Armley*, for
which he was charged and paid two quarterly
payments to the land-tax only. It was mov-
ed to quash these judgments, and said it has
been determined, that paying to the land-tax
in the case of a tide-water, who was allowed
it again, gained a settlement. *Oakhampton*
against *Kentown, East. 7 Geo. 2. Comb. 410.*
4 Mod. 331. Mr. *Wilson*, on shewing cause,
insisted that this was a yearly tax, and the
payment of two quarters not sufficient. But
by the court: It is a good settlement; and
the orders were quashed. *Seff. Ca. vol. 2.*
167.

Parish clerk
nominated
by the par-
son, gains a
settlement.

An order was drawn up for the opinion of
the court; and the question was, Whether
one appointed clerk of the parish by the par-
son,

son, and executing the office for a year, should gain a legal settlement within 3 & 4

Will. and M. of which the words are, *viz.*

shall execute any annual office. For it was objected, that this was not an annual office.

Mr. Lathmore contra. The intent of the act was, that no office under an annual one should gain a settlement; and *Majors continet in se minus.* On the general nomination to the

office of parish clerk, he is in for life, *Powell*,

J. His being put in by the parson makes no

difference, any more than where the constable

is put in by the leet, and not by the parish:

it is more than an annual office; he is

not removable, and has fees. *Eyre J.* He

is but a servant to the parson at will: where

he comes in by election, he has an estate for

life by the custom, but here is no deed or

writing: how therefore can he have an estate

for life in this office? *Powell J.* At that

rate he had not an office at will without deed.

The office of churchwarden was by common

law, and yet that is for a year without any

deed or writing. So it is of a parish clerk;

he is by common law an officer, and is in for

life without deed; so ruled *absente.* *Parker*

C. J. Salk. 336. Hil. 10 Ann. Between

Batton and Milwich.

Burlescome and Sampford Peuerel. Hil. 9 G. The office of

1. The sessions on a special order adjudge, tithingman

that executing the office of a tithingman gains a set-

would not gain a settlement. And by the tlement.

court: The order must be quashed; for this

is an annual office in the parish within the

N words

son,

words and meaning of the act of parliament.

S. a. 544.

Officiating
as school-
master and
receiving

10 l. per
annum.

gain

settle-

ment.

rent.

A person was certified for *Sheephead* to *Melbourne*, and staid 10 years; during that time *Lady Elizabeth Hastings* conveyed lands to trustees for several charities out of the profits, and (*inter alia*) the sum of 10 l. per annum, to the charity school at *Melbourne*, to be paid to the vicar there for the time being; in a special order of sessions it was stated, that the certificate-man officiated as schoolmaster several years, and received the 10 l. per annum, from the vicar: and this the sessions held gained him a settlement in *Melbourne*, where they declare he had a freehold estate. And by the court: The order must be quashed; for it does not appear how he came into this employment, and the legal right to receive the salary is in the vicar, who not caring to officiate himself, has paid it over to this man as his deputy; which could never give a settlement to any person, much less to a certificate-man.

Renting a
warren of
10 l. per
annum gains
a settle-
ment.

It was stated upon a special order of sessions, that a poor person rented a coney warren and a cottage upon it at 10 l. per annum, which the justices did not think gained him a settlement within the *stat. of Car. 2.* But by the court: A mill has been held to be a tenement within that statute, and why may not this? It is his ability to pay 10 l. per annum, that is the foundation of the settlement, and whether he pays it for a house for habitation, or for a warren which brings him in a profit, is im-

material;

material; the order of sessions must be quashed.

Sira. 678. Hil. 12 G. 1. Kinever and Stone.

Trin. 3 G. 1. South Sydenham and Lamerton.

A. and W. were removed from *Lamerton*, to *South Sydenham*, having there taken a lease of lands of the value of 13*l. per annum*, for 33 years, determinable on three lives; part of which lands to the value of 4*l. 10 s.* lay in *South Sydenham*, the messuage and the rest lay in *Lamerton*, and the rent reserved was but 7*l.* Two justices adjudged that *A.* was settled in *South Sydenham*, where he had an undoubted settlement previous to the lease, which adjudication was confirmed by the sessions. Mr. Serjeant *Glyde* moved to quash this order. Mr. *Reeve*, in defence, urged that the statute 13 & 14 *Car. 2. cap. 12*, says, that a person having a tenement under the value of 10*l. &c.* and that the reserved rent must be the rule and measure of the value, and though the tenement be worth 13*l.* that made no alteration. By the court: The quantity of the rent is not material, but the value of the tenement. If there be a lease of lands worth 10*l.* and a fine to be paid, and 20*s.* only reserved, it is the same thing. The difficulty is that the lands, to the value of 10*l.* lie not all in one parish; but if the tenement be intire, though the lands be in different parishes, it seems to be a tenement of 10*l. per annum* where the house is; otherwise where the tenements are distinct and lie in different parishes, as a tenement of 3*l.* in another. A person that can rent 10*l. per annum*, is presumed unlikely to become charge-

Pauper renting a tenement of 30 s. a year in one parish, and then hiring lands of 12 l. a year in another; a settlement where the tenement was.

able; therefore it is hard to send him away. But by Mr. Justice Eyre, under 10 l. and likely to become chargeable, are convertible terms. Order quashed. *Seff. Ca. vol. 1. 115.*

Special order: the short state of the case, on which the point was, whether the pauper who had rented a tenement of 30 s. a year in ——— for 2 years, and then took a parcel of land of 12 l. a year, and occupied that, and continued in possession of the former tenement during that time, had there lived and gained a settlement in the parish where the tenement was. — By the court: The statute does not seem to intend that it should be one renting; but the construction which has been put has been on different takings, and upon this reason, that a person of ability to take 10 l. a year, takes off the presumption of his being likely to become chargeable; and the orders were quashed. *Seff. Ca. vol. 2. 166. Trin. 2 Geo. 2. The King and Sandwich.*

E. 2 G. 3. The parish of St. *Devotens* and *Much Dewchurch*. The question that was before the sessions, was, Whether the marriage of John and Susannah Meredith was sufficiently proved? One witness made oath, that he and another were present on the 7th day of February, 1758, when a marriage was solemnized in the parish church of St. *Devotens*, between the said John and Susannah Meredith, by banns. And it appearing to the said sessions, that the entry of the said marriage in the register book of the said parish was made in manner following, viz.
 “ 1758, John Meredith, and Susannah Jen-
 I kins,

kins, were married by banns ;” but neither the minister, parties, nor witnesses signed such entry ; they therefore were of opinion, that the marriage was not legally proved. On shewing cause, it was urged in support of their opinion, that this appeared to be a void marriage. For although the omission of banns, was originally only an offence against the ecclesiastical law ; and even after the 7 & 8 W. c. 35. s. 2. the minister and clerk and man married without licence or banns, were only liable to a penalty ; yet since the act of the 26 Geo. 2. c. 33. an entry of this, properly signed, is become so essential a circumstance, that without it the marriage itself is void. But the court were of a different opinion. And lord *Mansfield* said, it was not incumbent on the persons married, to prove that the banns were published, nor doth the entry directed to be made affect the validity of the marriage. But he declared, it was a matter of great publick concern, for the preservation of pedigrees (which were now become very difficult to prove) : And the entry ought to have been according to the directions of the act. He even declared, that an information ought to be granted by the court against the minister for omitting it, if it should appear clearly that it was owing to his neglect ; and that such information should be prosecuted by the attorney general, at the king’s expence ; which he did not doubt would be readily directed, upon the recommendation of the court. And he ordered the fact to be further inquired into. And it came out,

Wife shall
follow the
husband's
settlement.

out, that a regular entry had been made; and that which was produced to the justices, was only a minute or memorandum; the minister was therefore justified. *Burrow's Settl. Cas.* 506. *Hart v. Burrow* 1011. *Quod ad hoc est in rem*

It seems generally agreed, that a woman marrying a husband who hath a known settlement, shall follow his settlement. And though in the case of *Uppotere* and *Dunswell*, *M. 1 G.* it was held, that the wife shall not gain a settlement with the husband, until she hath lived with him 40 days unremovable as part of his family; yet afterwards, in the case of *K. and Pinceborton*, *M. 3 G.* it was agreed by the court, that a wife is to be sent to her husband's settlement, though she never lived with him there. And in the case of *St. Giles's* and *Eversey Blackwater*, *H. 10 G.* the widow was removed to the deceased husband's settlement, though she had never been there; and it was ruled by all the court, that the removal was good, and that she must be sent to the last legal settlement of her husband, having acquired no other settlement since his death. *Cas. of S. 19 Sess. G. v. 1. 100, 105.*

v. 2. 112. *St. Giles's* and *St. Margaret's*. *E. 2 G.* Parishes of *St. Giles* and *St. Margaret's*. A woman married a foreigner, and her husband died. By the court, she must be sent to the place of her settlement before marriage. *Sess. G. v. 1. 97.*

Mich. 1. G. The parishes of *Uppotere*, and *Dunswell*. A woman settled in *Dunswell*, afterwards marries a vagrant, whose settlement does not appear. But he goes to *Uppotere*, and

and dies there. Two justices remove the widow to *Dunswell*, where she was settled before marriage. And by the court: Where it appears that the husband had no legal settlement as can be found, the marriage shall not put her in a worse condition than she was before, and is the same as the case of a *Scottishman* and a foreigner, and she shall not lose her former settlement. *Cas. of S. 89. Sess. c. v. 11. 80.*

Heard st W
and worst
of husband
incurable

One *Sarah Eberington*, was settled at *St. Giles's*; and married an *Irishman*. By the court: The marriage will not put her in a worse condition than she was before; and they held that she continued her settlement, notwithstanding her marriage. *Cas. of S. 98. Mich. 3 G. St. Giles & St. Margaret's.*

Hil. 9 G. St. Michael's, and Nunny. Or whether der of removal, reciting that the wife of a poor person who is now living was likely to become chargeable, and the place of her settlement was in the parish of *St. Michael*, she is therefore removed thither. It was moved to quash the order, because it did not appear, the husband was at the time of the removal in the parish of *St. Michael*, so that it is possible they may have sent the wife away from the husband. But by the court: We cannot intend he was not; if he was in the parish from which she was sent, that indeed would vitiate the order; but as neither of these facts appear against the order, to satisfy us that it is bad, we are not to presume it to be so; and therefore it must be confirmed.

Whether
the wife may
be removed
from the
husband.

1800.

A lease at
will gains a
settlement.

It was stated upon a special order of sessions, that a certificate-man agreed with the lessee of a mill, that he should occupy the mill, and pay 12 *l.* *per annum*; that there was no under lease or assignment, but in pursuance of that agreement, he occupied the mill two years, and paid the rent. The sessions adjudge it no settlement. And by the court: The order must be quashed; for if this be not an absolute lease for a year (as *Eyre* justice said it was, the rent being reserved as the rent for a year) yet it is undoubtedly a lease at will, which is sufficient to gain a settlement. *Sira. 502. Hill. 8 Geo. 1. Cranly and St. Mary Buildford.*

An entire
tenement of
10 *l.* *per annum*, though
it lies in two
parishes,
gives a set-
tlement
where the
party lies.

By the 9 & 10 *Will. 3. c. 11.* No certificate-man shall gain a settlement in the parish to which he comes with such certificate, unless he take a lease of 10 *l.* *per annum*, or shall execute some annual office in such parish. In this case the certificate-man took a farm of 10 *l.* *per annum*, part of which was in *St. John's*, and part in *Amwell*, but the greatest part, together with the house, was stated to lie in the parish that received his certificate, the court therefore held it a settlement there. *Sira. 529. Mich. 9 Geo. 1. St. John's, and Amwell.*

A cottager
30 years in
possession,
held a good
settlement.

Mich. 11 G. 1. The King and Wyley. On an order of sessions the case was thus: *J. S.* built a cottage upon the waste belonging to the *Earl of Pembroke*, without his licence, who never offered to disturb him in his possession, and he lived in this cottage 30 years, and by his will left 3 guineas in the hands
of

of executors to purchase this cottage of the Ear of *Pembroke*. Upon his death, *Elizabeth*, his only child and heir at law, entered into the cottage, and afterwards married one *Barrow*, and they had quiet possession for three quarters of a year, and then sold it. The question was, whether the daughter of *J. S.* and *B.* her husband had gained a settlement, by virtue of this inhabitaney in the parish of *Wyley*, in which the cottage was. *Mr. Reeve*, argued that this inhabitaney gained no settlement; the cottager was a disseisor, and had no right to build upon the waste, and was at any time removable by the lord of the waste, and if he might have been removed for days, his long possession shall give no title; for he must only be considered as a tenant at will, and consequently his continuance upon the cottage, though never so long, could give him no settlement; and none claiming under him shall be in a better condition. The statute of 31 *Eliz. c. 7.* prohibits the building of cottages; therefore the erection of one is unlawful, and shall have no privilege or encouragement. I admit, if a person inhabits by virtue of a lease, or other good title, for 40 days, he gains a settlement. But the inhabitaney in this case was without any good title, and consequently can gain no right of settlement. These objections were answered by the court, who held it clearly to be a good settlement. And though it was further objected, that the cottager himself was sensible he had no right, by his devising money for the purchase of a

term, under the lord of the waste, yet it was over-ruled. And by all the court it was held, That when a man hath such a possession as he cannot be removed from, and hath enjoyed that possession 40 days, he thereby gains a settlement; which is the reason why a copyholder or lessee for years gains a settlement by an inhabitancy for 40 days: For in those cases the justices of the peace cannot determine his right; this present case is very strong, for the thirty years possession of the cottager without interruption, would have been a good title in an ejectment; and for that reason the justices of peace cannot determine his title. It appears upon the face of the order, that the cottager had a good title against all the world, except the lord of the waste, and against him he had a good title in ejectment, and in any case but in a real action. *Lord chief justice Raymond* said, he had known recoveries upon a 20 years quiet possession, and 20 years possession is a title to a plaintiff in ejectment as well as to a defendant. After so long a possession as this, it shall be presumed that the cottager had a licence to erect a cottage; but this case goes further, for besides the 30 years quiet possession of the cottage, here is a descent cast upon the daughter, who was heir to the cottager, and *prima facie* it is an inheritance in the daughter, and an estate by disseision is in law a good estate, and a fee-simple, till it be defeated. And all the court held that the justices had no jurisdiction in this case; for they could not examine the title

title to land; and the settlement in the parish of *Wyley* was adjudged to be good, and quashed the order made to remove *Barrow* and his wife to *D*, the place of *B*'s last legal settlement in *Somersetshire*. *Self. Cas. vol. 2.*

115.

An acre of land in *Cotleigh*, wherein *A* had a lease for lives, was mortgaged to a pauper for 15*l*. when the mortgager died two years interest was due, and he also owed 18*l*. 10*s*. to the mortgager by bond and simple contract; and it was agreed between the widow, and the mortgager, that he should administer, and take all but the household goods, which he did. And the sessions having held, that his taking to this acre, and his living on it 8 years, did not gain a settlement under 9 *Geo. 1. c. 7.* which requires a *bona fide* payment of 30*l*. the court now quashed the order, it being to all intents of law and equity the same as actual payment of the consideration money. *Sira. 1162. Hill. 15 Geo. 2. Cotleigh and Stackland.*

East. 13 G. 2. Hatfield and Furley. Upon a special case stated, the question was, whether a certificate person, had gained a settlement by renting a windmill in *Banball*, of 14*l*. per annum (that is) whether it was a sufficient tenement, within the statute, though it was admitted that in *Salkeld 536.* a water-mill was held a tenement, and the renting of it clearly a settlement within the statute. Yet it was objected in this case, that it appeared, while he rented it under a lease, he gave security for the rent, and for the last 3 years

A purchase of 30*l*. value to make a settlement.

Renting a windmill of 14*l* per annum, by a certificate-man held a settlement.

years he was only a tenant at will; now the foundation of the settlement is the credit of the party renting, and that fails in this case: it was argued on the other side, that he that has credit to give security, has credit to pay rent: The King and *St. Mary Guildford*, *Hilary*, 8 Geo. 1. renting a wind-mill generally was held good. Court? No difference what sort of mill it is, but it will gain a settlement, and the giving security for the rent does not alter the case, and the order of sessions was quashed. *Sess. Ca. vol. 1. 320. Trin. 11 Geo. 2. Buckley, and Benhall.*

Descent of
a copyhold
to a certifi-
cate-man,
gains a set-
tlement.

E. 3 G. 1. Burclear and Eastwoodhay. On a special order of sessions the case was stated, That *Abraham Hatchitt*, was legally settled in the parish of *Burclear*, and about 18 years since married and had four daughters. About 8 years since, he and his wife and children came into *Eastwoodhay*, on his being a certificate-man; whilst they were there, a copyhold of 20*l. per annum* descended to his wife, which they enjoyed for 5 years, till her death, and then, according to the custom of the manor, it descended to the eldest daughter. About half a year ago, the man asked relief in *Eastwoodhay*, and thereupon the sessions send him back to *Burclear*. Before they took up the case upon the special state of it, an objection was made to the order of two justices, that they adjudge him likely to become chargeable; whereas a certificate-man is not removeable, till he becomes actually chargeable. And though it is stated by the order of sessions, that he asked relief of the parish; yet

yet one order shall not be made good by another, any more than it can by matter alledged in return. To which it was answered, that if the order of two justices is to stand by itself, it will be well enough; for it is a general order of removal, wherein no notice is taken of his being a certificate-man, and therefore probably is sufficient. Besides, that order is intirely out of the case; for the special matter being referred to the court, they are to judge upon that only. *Quod fuit concessum per curiam*; then it was moved to quash the special order; because though the man came into *Eastwoodhay* with a certificate, yet the enjoyment of the copyhold for 5 years, during which time he was not removeable, had gained him a settlement there. On the other side it was said; that the 9 & 10 *W. 3. c. 11.* having provided that a certificate-man shall not gain a settlement, unless he takes 10 *per annum*, or serves a parish office, and that being an explanatory act, which is not to be explained; therefore this man not coming within either of these cases, was, notwithstanding the descent of the copyhold to his wife, removeable upon his becoming a charge to the parish. And by the court: This is not an explanatory, but a new law; and must therefore receive a liberal construction. The exceptions in the statute prove this case, being a case more reasonable than either of those that are there mentioned. If a certificate-man by taking 10 *l. per annum*, gains a settlement, *a fortiori*, shall he that has an estate of his own, especially in

in this case, where he does not come to it by an act of his own, (which might savour of a fraud), but it is cast upon him by the act and operation of law. If he that serves a parish office gains a settlement upon account of his presumed ability, with greater reason shall he that has ability of his own, visible to all the world. It has been already adjudged that any other person by the descent or purchase of a freehold or copyhold, or by becoming intitled to a lease for years, gains a settlement; and it cannot be supposed the parliament intended, to put a certificate-man in a worse condition. The possession of the copyhold is not material, for if it is, his bringing his own makes him not removable. A man must take a tenement of 10 *l. per annum*, to gain a settlement; but yet he may come to settle upon a tenement of his own, though of ever so small a value. This man therefore, being for 5 years irremovable from *Eastwoodhay*, has gained a good settlement there, and the order to remove him from thence must be quashed. *Str. 163.*

M. 25 G. 2. The parishes of *Marden*, and *Barham*. Two persons jointly hired a house and land at *Marden*, for 16 *l.* a year, and jointly occupied the said house, tilled the land for the said year, and jointly paid the rent. It was urged that this gained no settlement to either of them. And a case was cited between *Croft* and *Bainford*, at *Durham* assizes, 1733, which was a joint taking of 14 *l.* a year, each paying separately, the land lord not caring to let to either singly. And the

the two judges (who were lord chief justice *Eyre* and *Reeves*) to whom it was referred, held it no settlement; because the statute requires the person's taking a tenement of 10*l.* a year value. Whereas this practice of calling in a partner in the taking, would, if admitted to be equivalent to a sole taking, evade and frustrate the statute, and let in an indefinite number of families, all to be settled upon one tenement of 10*l.* a year value. On the contrary it was argued, that each was legally tenant of the whole, and both liable to the landlord for the whole rent. By the court. This was not sufficient to gain a settlement. Whatever remedy the landlord might have against the occupiers of the land for his rent, the act of parliament in the present case considers only the right; which clearly is but to one half, and that half doth not amount to 10*l.* a year. *Burrow's Sett. Cas.* 311. *Mich. 7 Geo. 3.* The parishes of *Llandoveras* and *Northop*. *Evan Hughes*, the father of the pauper, rented a tenement of 10*l.* a year, and paid the rent. He lived above 40 days in a part of it, which was of the yearly value of 40*s.* only. And immediately after his taking the tenement, he let the residue to under-tenants, without residing thereupon at all himself. It was argued, that being liable only to the rent did not gain him a settlement. He must occupy as well as take a tenement of 10*l.* a year value, and he ought to occupy the whole 10*l.* a year. Otherwise, many families might be introduced into a parish, upon one such taking. It would quite evade the act, if the mere taking of a tenement

tenement would do; for then one would gain a settlement by taking, and another by occupying such tenement. But by the court: The act of parliament doth not require a person renting a tenement of 10*l.* a year, to occupy it; it is enough, if he rents it, and resides 40 days in the parish. The ground the act goes upon, is a person's having credit sufficient to hire a tenement of such value. This man appears to have had such credit. The under-tenants do not take a tenement of the yearly value of 10*l.* therefore they do not hereby gain a settlement. *Burrow & Sattl. Cas. 571.*

East. 11 An. The parishes of *Harrow*, and *Edgeware*. A person settled at *Harrow*, went into *Edgeware* parish, and purchased a copyhold estate for life, and lived therein 4 or 5 years, and died. And this being a tenement under 10*l.* a year, the question was, upon the 13 & 14 *G. 2.* whether this gained him a settlement at *Edgeware*. It was argued, that the statute hath been always held to mean an estate which a man takes to farm, and not an estate of his own; for a person having a freehold, cannot be removed from it, though not worth 10*l.* a year. And by *Parker, Ch. J.* and the court: Where a person has an estate for life, or an estate of inheritance of his own, it gains him a settlement, though less than 10*l.* a year. *Foley 257.*

Trin. 7 G. 2. Parishes of *Sundridge* and *Hever*. One *Thomas Perch*, by indenture demised to *Thomas Gates* the father, a cottage at 5*s.* a year,

year, which was the full value, for 99 years. The lessee held it till his death, and devised it to *Thomas Gages* the son. The question was, whether the son, as executor, being intitled to the term, shall gain a settlement by inhabiting in such cottage? By the court: Where a man lives upon his own, is a case of a very tender nature, and the law will not unfetter him: Persons to be removed under the statute of C. 2. are those that wander from place to place, and not those who live upon their own estate: And it was adjudged, that he gained a settlement. *Diss. C. v. 1. 200. Stra. 983.*

By the 13 & 14 C. 2. c. 12. it is enacted That whereas the number of poor within England and Wales is very great; and whereas, by some defects in the law, poor people are not restrained from going from one parish to another, — it is enacted, that within 40 days after any such persons shall come to settle in any tenement under 10 l. a year, two justices, (one of the *quorum*) may remove them where they were last legally settled, unless they give sufficient security for the discharge of the parish.

By the 8 & 9 W. c. 30. it is enacted, That for as much as many poor persons, chargeable to the place where they live, merely for want of work, would elsewhere maintain themselves, but not being able to give such security as may be expected, on their coming to settle in any other place, it is enacted, That if any person who shall come into any parish or place there to reside, shall

shall at the same time procure, bring, and deliver to the churchwardens or overseers where he shall come to inhabit, a certificate, under the hands and seals of the churchwardens and overseers of any other parish, or the major part of them, or of the overseers where there are no churchwardens; to be attested by two or more credible witnesses; thereby owning and acknowledging the person mentioned in the said certificate, to be an inhabitant legally settled in that parish, township, or place: Every such certificate, having been allowed of and subscribed by two justices of the place from whence the certificate shall come, shall oblige the said parish or place to receive and provide for the person mentioned in the said certificate, together with his family as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given: And then and not before, it shall be lawful for such person, and his children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place, from whence such certificate was brought. *f. 1.*

And by the 9 & 10 W. 2. 11. No person coming into any parish by such certificate, shall be adjudged to have procured a legal settlement in such parish, unless he shall really take a lease of a tenement of the yearly value of 10*l.* or shall execute some annual office

in such parish, being legally placed in such office.

By the 12 *An. st.* 1. 18. *f.* 2. It is enacted that if any person shall be an apprentice bound by indenture, or be a hired servant, to any person who came into or shall reside in any parish, township, or place, by means or licence of such certificate, and not afterwards having gained a legal settlement there; such apprentice or servant shall not be adjudged thereby to have any settlement in such parish, or place; but shall have their settlements in such place as if they had not been apprentices or servants as aforesaid.

And by the 3 *G.* 2. *c.* 29. It is enacted, That the witnesses who attest the execution of the certificate, by the churchwardens and overseers of the poor, or one of the said witnesses, shall make oath before the justices of the peace who are to allow the same, that such witnesses did see the churchwardens and overseers, whose names and seals are thereunto subscribed, sign and seal the said certificate; and that the names of such witnesses are of their own proper hand writing: Which said justices of the peace shall also certify, that such oath was taken before them. And every certificate so allowed, and oath of the execution thereof so certified, shall be allowed in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence, without other proof. *f.* 8.

By the Stat. 13 & 14 *G.* 2. *c.* 12. It is enacted, That on complaint by the churchwardens or overseers, within 40 days after
Concerning the settlements of apprentices.
any

any person shall come to settle in any parish, in any tenement under 10*l.* a year; two justices of the peace (one being of the *quorum*) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days at the least.

And by the 17. 2. c. 17. The said 40 days shall be reckoned, not from the time of his coming to inhabit, but from the time of his delivering notice in writing. And by the 3*W. c.* 11. not from the time of delivering such notice, but from the time of the publication of such notice in the church.

But by the 3*W.* If any person shall be bound apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, though no such notice in writing be delivered and published. *s.* 8.

By the 12 *An. st.* 1. c. 18. Any person who shall after June 24, 1713, be an apprentice bound by indenture to any person residing under a certificate, in any parish, township, or place; and not afterwards having gained a legal settlement in such place; such apprenticeship, by virtue of such apprenticeship, indenture, or binding, shall not gain any settlement in such parish, township, or place; but every such apprentice shall have his settlement in such parish, or place, as if he had not been bound apprentice. *s.* 2.

By the 9 & 10 *W. c.* 11. A person coming into any parish by a certificate, shall not be adjudged by any act whatsoever to gain a settlement

settlement in such parish, unless he shall *bona fide* take a tenement of 10*l.* a year, or execute an annual office in such parish.

By the *stat.* 8 *An. c.* 9. & 9 *An. c.* 21. It is enacted, That the master shall pay a duty of 6*d.* a pound, for 50*l.* or under, and of 12*d.* a pound for every pound above, of money, or of things not money according to their value, given with apprentices, and proportionably for greater or lesser sums: Except money given with apprentices put out by the parish, or out of publick charities. The sum given to be written in the indenture in words at length. And besides the stamps before requisite, the indentures are to be stamped with another stamp, denoting the 6*d.* or 12*d.* a pound respectively: And if the sums are not truly inserted, or duties not paid or tendered, or indentures not stamped or tendered to be stamped within the time limited, such indentures shall be void.

By the 31 *G.* 2, *c.* 11. No person who shall have been bound an apprentice, by any deed, or writing, not indented, being first legally stamped, shall be liable to be removed from the place where he was so bound and resident 40 days, by any order of removal, or order of sessions, by reason only of such writing not being indented.

By the *stat.* 13 & 14 *C.* 2, *c.* 12. It is enacted, That on complaint by the churchwardens or overseers of the poor, within 40 days after any person shall come to settle in the parish in any tenement under 10*l.* a year, two justices (one of the *quorum*) may remove him

Statutes relating to settlement by service.

him to where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days at the least. But by the 1 *J. 2. c. 17.* 40 days from the time of delivering notice in writing.

And by the 3 *W. c. 11.* 40 days from the publication of such notice in the church.

But by the said act of the 3 *W.* If any unmarried person, not having children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged a good settlement therein, though no such notice in writing be delivered and published.

By the 12 *An. st. 1. c. 18.* It is enacted, That if any person after *June 24, 1713,* shall be hired servant with any person, who did come into any parish, or place, by means or licence of a certificate, and not afterwards having gained a legal settlement in such parish, or place; such servant shall not gain any settlement in such parish, or place, on account of such hiring or service, but shall have his settlement as if he had not been an hired servant to such person. *s. 2.*

By the 9 & 10 *W. c. 11.* No person who shall come into any parish, township, or place by a certificate shall be adjudged, by any act whatsoever, to have procured a legal settlement therein, unless he shall *bona fide* take a lease of a tenement of 10 *l.* a year, or shall execute an annual office in such parish.

By the 13 & 14 *C. 2. c. 12.* It is enacted, That on complaint within 40 days after any person shall come to settle in any tenement under 10 *l.* a year, two justices of the peace may

Of settle-
ment by
continuing
40 days.

may remove him to the place where he was last legally settled for 40 days.

And by the 17. 2. c. 17. It is enacted, That the 40 days, intended by the said act to make a settlement, shall be accounted from the time of his delivering notice in writing, of the house of his abode, and the number of his family, if he have any, to one of the churchwardens or overseers of the parish to which he shall remove. *f. 3.*

But by the 3 W. c. 11. The said 40 days continuance of such person, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing, which he shall deliver, of the house of his abode, and the number of his family, if he have any, to a churchwarden or overseer. Which the said churchwarden or overseer shall read, or cause to be read, immediately after divine service, in the church or chapel, on the next Lord's day, when there shall be divine service in the same. And the said churchwarden or overseer shall register, or cause to be registred, the said notice in writing, in the book kept for the poor's account. *f. 3.*

And by the same statute *f. 5.* If any churchwarden or overseer of the poor shall refuse or neglect to read, or cause to be read such notice as aforesaid, he shall (on proof thereof by the oath of two witnesses before one justice of the peace) forfeit for every offence 40 s. to the party grieved, by distress, by warrant directed to the constable of the parish or place where the offender dwells; and

for want of distress, such justice shall commit him to the common gaol for one month. And if any churchwarden or overseer of the poor shall refuse or neglect to register, or cause to be registered, such notice, he shall, on the like conviction, forfeit 40s. to the use of the poor where the offender dwells, to be levied as aforesaid; and for want of sufficient distress, the said justice shall commit him as aforesaid, for the time aforesaid.

Settlement
by paying
parish rates.

By the 13 & 14 C. 2. c. 12. 40 days inhabitancy shall gain a settlement; and by the 17. 2. c. 17. such 40 days shall be reckoned from the delivering of notice in writing; and by the 3 W. c. 11. from the publication of such notice in the church.

But if a person who shall come to inhabit in any town or parish, shall be charged with, and pay his share, towards the publick taxes or levies, he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published. 3 W. c. 11. f. 6.

But by the 9 & 10 W. c. 11. Those persons residing under a certificate, shall not gain a settlement by being rated to and paying any such levies, taxes, or assessments.

But by 3 W. c. 11. f. 6. If any person who shall come to inhabit in any town or parish, shall for himself, and on his own account, execute any publick annual office or charge in the said town or parish, during one whole year; he shall be adjudged to have a legal settlement therein, though no such notice in writing be delivered and published.

By

By the 7 G. 3. c. 40. A person renting turnpike tolls, and residing in the toll house, shall not thereby gain a settlement. *f. 46.*

A person having an estate of his own, though under 10 *l.* a year, shall gain a settlement thereby, within the statute of the 13 & 14 C. 2. Person settled by his own estate.

By the 9 G. c. 7. It is enacted, That after March 25, 1723, no person shall be deemed to acquire any settlement in any parish, by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of 30 *l. bona fide* paid, for any longer or further time than such person shall inhabit in such estate, and shall then be liable to be removed to such parish or place, where he was last legally settled, before the said purchase and inhabitancy therein.

By the 13 & 14 C. 2. c. 12. Whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most wood for them to burn or destroy, and when they have consumed it, then to another parish, and afterwards become rogues and vagabonds, it is enacted, That it shall be lawful, upon complaint made by the churchwardens or overseers, to any justice, within 40 days after any such person coming so to settle in any tenement under the yearly value of 10 *l.* for any two justices (one whereof is of the *quorum*)

rum) of the division, where any person that is likely to become chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person to such parish, where he was last legally settled, unless he give sufficient security for the discharge of the said parish, to be allowed by such justices. *f. 1.*

And it is also enacted, by the same statute, that if such person shall refuse to go, or shall not remain in such parish where he ought to be settled, but shall return of his own accord from whence he was removed, one justice may commit him to the house of correction, to be punished as a vagabond. *f. 3.*

And by the 17 G. 2. c. 5. All persons, unlawfully returning to such parish from whence they have been legally removed by order of two justices, without bringing a certificate from the parish whereunto they belong, shall be deemed idle and disorderly persons; and any one justice may commit them (being thereof convicted before him, by his own view, or by their confession, or by the oath of one witness) to the house of correction, to hard labour for any time not exceeding one month. *f. 1.*

And if the churchwardens and overseers of the parish whereto he shall be removed, refuse to receive such person, and to provide work for him, as other inhabitants of the parish; any justice of the peace of that division shall bind any such officer, in whom there shall be default, to the assizes or sessions,

sessions, to be indicted for his contempt in that behalf. 13 & 14 C. 2. c. 12. s. 3.

By the 3 W. c. 11. It is enacted, That if any person be removed by virtue of this act, from one county, riding, city, town corporate, or liberty to another, by warrant of two justices; the churchwardens or overseers of the parish to which the said person shall be so removed, are required to receive the said person: and if they shall refuse, such person so offending shall (on proof thereof by the oath of two witnesses before one justice of the place to which the person shall be removed) forfeit for each offence 5 l. to the use of the poor of the parish from which such person was removed, to be levied by warrant to the constable of the parish where such offender dwells; and for want of sufficient distress, the said justice shall commit the offender to the common goal for 40 days. s. 10.

By the 3 G. 3. c. 8. concerning officers, soldiers, and sailors, it is enacted, That such officers, soldiers, and mariners who have served since Nov. 22, 1748, and not deserted, and also their wives and children, may set up trades without any molestation by reason of their using of such trade; nor shall they, or their wives, or children, during the time they shall exercise such trades, be removable to their place of settlement, until they shall become actually chargeable. Two justices of the peace, in the mean time, may summon and examine them, concerning their place of settlement; and shall give them

an attested copy of their affidavit, which shall be admitted as evidence in any general or quarter sessions.

No spirituous liquors shall be sold or used in any workhouse, or house of entertainment for parish poor. 24 G. 2. c. 40.

Servants in the *Foundling Hospital*, shall not, by such service, gain any settlement in the parish where it is situate. 13 G. 2. c. 29.

Servants in the *Magdalen Hospital*, established for the reception of penitent prostitutes, shall not, by such service, gain any settlement in the parish where such hospital is situate. 9. G. 3. c. 31.

Rates of Coaches, Chairs, and Watermen.

Number of
coaches and
chairs.

Licensed by
commissioners.

BY 11 G. 3. c. 28. One thousand hackney coaches, and four hundred chairs are allowed in *London* and *Westminster*, or suburbs of the same, or within the parishes and places in the weekly bills of mortality.

Hackney coaches and chairs are to be licensed by commissioners, and upon every licence shall be reserved 5s. per week, payable monthly for each coach, and 10s. *per annum* to be paid quarterly for every chair. 9 An. c. 23. s. 2. 3.

Any

Rates of Coaches and Chairs.

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Any person driving a hackney coach, without licence, shall forfeit 5*l.* and a chair 40*s.* Persons driving without licence.
9 An. c. 23. f. 4.

Any coachman refusing to go at, or exacting more for hire than is limited, shall forfeit not exceeding 3*l.* nor under 10*s.* at the discretion of the commissioners, three or more whereof are to determine the same. Refusing to go for their fare, commissioners to levy penalties, &c.
1 Geo. 2. c. 57. f. 2.

The commissioners are impowered to make bye laws for the regulating hackney coachmen, &c. And the rents or sums reserved, and all penalties shall be levied by the warrant of three commissioners, by distress and sale of goods in 10 days.

Any person or persons not paying coachmen or chairmen their due fare, or cutting and defacing coaches, chairs, &c. a justice of the peace shall order them to make satisfaction; and on refusal may bind him over to the quarter sessions. Not paying fare.

No hackney coachman shall presume to take for his hire, within 10 miles of *London* or *Westminster*, above 10*s.* for a day, reckoning 12 hours to the day, (this however is increased to 12*s.* 6*d.* per day, by *7 Geo. 3. c. 44. f. 17.*) nor above 1*s.* 6*d.* for the first hour; and 1*s.* for every hour after *stat. 5 & 6 W. & M. c. 22. f. 7. 9 An. c. 23. f. 6.* and no person be obliged to pay above 12*d.* for the use of an hackney coach, for any distance not particularly set down in this act, viz. *9 An. c. 23.* so as the same do not exceed 1 mile, and 4 furlongs; nor above
11. 6d.

Places men-
tioned in the
said places.

1s. 6d. for any distance, not exceeding two miles, *Stat. 9 An. c. 23. s. 7.* A hackney coachman is obliged to go any where within 10 miles of *London* and *Westminster*, by *Stat.*

7 Geo. 3. 3. c. 44. s. 12. The places and sums specified by the act are 1s. from any of the Inns of Court (to any part of *St. James's* or *Westminster*, (except beyond *Tothil-street*) and from the said Inns, or thereabouts, to the *Royal Exchange*, 1s. and to the *Tower*, or *Bishopsgate* or *Aldgate*, 1s. 6d. and so from the said places to the said Inns: And the like rates from and to any place at the like distance.

Justices for
Kent and *Essex*, autho-
rized to put
the hackney
coach laws
in execution
within their
jurisdiction.
*4 G. 3. c.
36. s. 2.*

By *4 G. 3. c. 36. s. 20.* Every justice of the peace for *Kent* and *Essex*, shall have the same authority within his jurisdiction, to put any of the laws in force for licensing and regulating the owners and drivers of hackney coaches, against the drivers of licensed hackney coaches, for any offence committed against any of the said laws, as the *London*, *Westminster*, *Middlesex* or *Surry* commissioners, aldermen, or justices.

Number and
distance of
hackney
coaches li-
mitted in
London.

By the *11 G. 3. c. 29.* The number of hackney coaches to stand and ply for hire, between the end of *Freshman's-cour*, *Cornhill*, and the end of *Cornhill Eastward*, *London*, shall be no more than 10 at a time; and from the end of *Bucklersbury*, to the end of *King's-street*, *Cheapside*, no more than five at a time, and not to be nearer the one to the other than 20 feet; and that all other coaches within the said city shall so stand or ply, (except the standing be against any dead wall) at the distance

distance of 8 feet at least from each other; and that every coach shall give way to all waggons, drays, carts, and other carriages to pass and repass, upon pain that every owner or driver of hackney coaches, which shall stand, or who shall ply in any place, where the number is limited, after such number shall be standing or plying therein, or shall stand nearer one another than hereby directed, or shall not, upon demand, give way for other carriages to pass and repass as aforesaid, shall pay 20 s. to be recovered and levied as any other penalty incurred by hackney coachmen, by any other law relating to them.

By the same statute, It is enacted, That within 7 days after, the owner of hackney coaches licensed shall leave at the officer of commissioners at *Guildhall*, an account of place of abode, and figure or number of each coach; and the owners of coaches already licensed shall leave the like account; and so every licensed hackney coachman shall, within 7 days after his place of abode shall be changed, give the like account, on pain of owner's forfeiting 20 s.

Places of abode, with figures of their coaches to be registered.

The commissioners are empowered to order persons licensed for using hackney coaches to provide check strings or wires, to be placed as the commissioners shall think most convenient; and every hackney coachman plying for hire, without such check string, shall forfeit 5 s.

Every hackney coach to have check strings on forfeiture of 5 s. s. 2.

In all cases where the owner of any licensed hackney coach shall provide check strings or

Bye law on the above clause.

Rates of Coaches and Chairs.

wires to be placed in such part of every such coach as to the said commissioners shall seem most convenient, pursuant to an act of parliament made and passed in the 11 G. 3. the driver of every coach shall, during the time of his driving his fare, hold such check string or wire in his hand, so that the same may be used for the accommodation of the fare, according to the intention of the said act; and in default thereof, being hereunto required, the driver shall for every such offence, forfeit a sum not exceeding 10s. at the discretion of the said commissioners, or the major part of them.

In pursuance of the *stat. 1 An. c. 23. s. 7.* the commissioners have caused to be measured and rated several distances between the most noted parts of the town, as follows, viz.

One Shilling Rates for Coaches.

Rates settled
by commissi-
oners for
coaches.

FROM *Westminster Hall* to *Marlborough-street, Belton-street, Soho-square, Bloomsbury-square, Little Queen-street, Holborn.*

From *St. James's-gate* to *Queen Ann's-square, Westminster*, the nearest corner of *Red Lyon-square.*

From *Golden-square*, to *Red Lyon-square.*

From the *Haymarket Theatre* to *Red Lyon-square, Bloomsbury-square, Queen-square, Westminster.*

From *Red Lyon-square* to *Guildhall.*

From the upper end of *Fetter-lane, Holborn*, to *Aldgate.*

From the *Royal Exchange* to *Hoxton-square.*

From

Rates of Coaches and Chaises.

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From *Newgate* to the middle of *Greek-street*, near *Soho-square*.

From the *King's-head Tavern*, *Southwark*, to the sign of *Sir William Watworth*.

From *Gray's-Inn* to *Sadler's Wells*, by *Islington*.

From *Tam's Coffee-house* in *Russel-street*, *Covent Garden*, to *Newcastle-house*, near *Clerkenwell church*.

From *Temple Bar* to *Billingsgate*.

From *Aldgate* to *Shadwell-church*.

One Shilling and Six-penny Rates for Coaches.

From *Drury-lane playhouse*, to *Queen Ann's-square*, *Westminster*.

From *Westminster Hall* to *St. Paul's-church*, or *Queen's-square*, *Red Lion Fields*.

From *St. James's Gate* to *Hatton Garden*.

From the *New Exchange* in the *Strand* to the *Royal Exchange*.

From the *Haymarket playhouse* to *Hatton Garden*.

From *Westminster Hall* to *Red Lion-square*.

From *St. James's* to *Marybone-church*.

From the *Royal Exchange* to *Bloomsbury-square*, or to the watch-house at *Mile End*.

From the outside of *Aldgate* to *Stepney-church*.

From *Bedford-street*, *Covent Garden*, to *Coleman-street*.

From *Bread-street* to *Upper Moorfields*, and thence to *Hoxton-square*.

From *Austin Friars-gate* in *Bread-street*, to *Hart-street*, by *Bloomsbury-market*.

Rates of Coaches and Chairs

From St. Martin's-lane, in the Strand, to Gold-street by Wood-street.

From the end of Lombard-street, next Grace-church-street, to Somerset-house.

From St. Lawrence's-church, by Guildhall, to Brownlow-street in Drury-lane.

From the Royal Exchange to Newington-church, beyond Southwark.

From Tom's Coffee-house, by Covent Garden, to Royal Exchange.

From Stocks-market to Charing-Cross.

From Aldgate to Ratcliff-Cross.

Numbers,
&c.

All hackney coachmen not having tin plates with the number of their coaches, shall forfeit 5*l*. Refusing to permit any person to take the number, or giving a wrong number, to forfeit a sum not exceeding 40*s*.

Coaches for
funerals.

Only licensed persons shall stand, ply or drive any coach, hearse or coach horses for hire; or shall let to hire any mourning coach, or coach horses, to attend on funerals, within the weekly bills of mortality, under the penalty of 5*l*. 1 Geo. II. 2. c. 57. s. 3.

One hundred and seventy-five coaches only are to ply on a Sunday by persons appointed, under the like penalty. 5 & 6 W. & M. c. 22. s. 18.

By the 7 G. 3. c. 44. s. 18. Every hackney coachman, who shall drive with any hackney coach on the Lord's day, shall be liable to do the like work, as such coachman or his driver is by this or any former act compellable or liable to do on any other day of the week.

Any hackney coachman being guilty of misbehaviour in his employment, the commissioners

commissioners may either revoke his licence, or inflict a penalty not exceeding 3*l.* upon conviction, for every such offence, to be paid to the poor; and if any person so convicted, shall not be able, or willing to pay the sum, he shall be committed to *Bridewell* or some other house of correction, to be kept to hard labour for 30 days. 7 G. 3. c. 44. s. 16.

The commissioners may in all cases, where they may now by law commit any offender, convicted before them, to *Bridewell*, or any other house of correction, commit such offender, by warrant under their hands and seals, immediately to *Bridewell*, or some other house of correction, to hard labour, for any time not exceeding one month, and such offender shall also receive the correction of the said house, if such commissioners shall so order. 10 G. 3. c. 44. s. 5. *see* 7 G. 3. c. 44. s. 15.

By the 10 G. 3. c. 44. s. 7. All the offences intended to be provided against by 7 G. 3. c. 44. or by this present act, shall and may be heard and determined, not only by the said commissioners, but also by any justice or other magistrate, where such offence shall be committed, by such means as the penalties and forfeitures in 9 An. c. 23. are directed to be levied and recovered.

Overseers
and rulers,
&c. and
their pow-
er.

THE lord mayor and court of aldermen are yearly to elect eight of the best watermen, to be overseers and rulers, and preserve good order among the rest; and the watermen shall choose assistants, who may make rules to be observed, under penalties; and the lord mayor and aldermen and justices of peace are to hear and determine offences, &c. watermen and lightermen on the *Thames*, between *Gravesend* and *Windsor*, are made a company by statute 2 & 3, P. & M. c. 16. 11 & 12 W. c. 3. 21.

Water-
men's
names re-
gistered, size
of boats, &c.

The names of watermen shall be registered by the overseers; their boats shall be 12 foot and a half long, and 4 feet and a half broad in the midship, or be liable to be forfeited; and two watermen shall not ply, except one of them hath exercised the profession 2 years, and hath been allowed by the overseers. And watermen taking more than the fares appointed, forfeit 40s. and suffer half a years imprisonment; and refusing to carry persons for their fare, be imprisoned 12 months. *Ibid.*

Taking
more than
their fares.

Who to
carry passen-
gers on a
Sunday.

The rulers are to appoint 40 watermen, who are to carry passengers cross the river on *Sundays*; and after being paid for their labour, the overplus is to be paid to the poor decayed watermen, &c.

Licence for
boats,

When any persons travel on a *Sunday* with boats, they are to be allowed by a justice of peace, on pain of forfeiting 5 s. 11 & 12 W. 3.

By

Watermen

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By the 4 *Ann. c. 13.* On notice of the commissioners of the admiralty, watermen are to appear before the company, to be sent on board the fleet: and on their not appearing, they shall be imprisoned one month, and be disabled for 2 years.

On notice
watermen
to serve in
the fleet.

Apprentices are not to take upon them the care of any boat till 16 years of age, &c. except they have worked with some able waterman for 2 years at least, under the penalty of 10*l.* 2 *G. 2. c. 26.*

Any person not having served 7 years to a waterman, &c. who shall row any boat on the said river for hire, shall forfeit 10*l.* to be levied by distress; and for want of sufficient distress, the lord mayor of London, or any justice for the place where the offence is committed, may commit the offender to the house of correction, not exceeding one month, nor less than 14 days. 2 *G. 2.*

Persons to
serve seven
years, &c.
by 2 *Geo. 2.*

But nevertheless gardeners boats, dung boats, fishermen, mill boats, wood lighters, western barges, &c. are excepted, and may be rowed by persons in such manner as accustomed.

Exception in
the act.

Watermen using boats, &c. upon the Thames, shall not take any apprentice under 14 years old, who shall be bound for 7 years, and inrolled in the book of the watermen's company, under the penalty of 10*l.* and no more than two apprentices shall be taken at one time, when the first has served 4 years, on the like forfeiture. 10 *G. 2. c. 31.*

Watermen
regulated by
10 *Geo. 2.*

No person or persons working any boat, row barge, &c. shall take in above 37 passengers.

Number of
passengers to
be taken,

Watermen.

passengers, and 3 more by the way; nor in any other boat above 8 passengers, and 2 by the way, on pain of forfeiting 5 *l.* for the first offence, and 10 *l.* for the second, &c. And if any person be drowned, where a greater number is taken in, the waterman shall be guilty of felony, and transported.

How tilt
boats to be
governed.

The tilt boats used between *London bridge* and *Gravesend*, shall be 15 tons at the least, and other boats 3 tons: Also the rulers of the company of watermen are to appoint two officers, one at *Billingsgate* at high water, and another at *Gravesend*, to ring a bell for the tilt boats to put off; and if they do not immediately proceed on their voyage, with 2 sufficient men, without putting on shore within 2 miles, they shall forfeit 5 *l.* leviable on their boats, tackles, &c.

Barges, &c.
excepted.

Those who navigate flat bottomed boats or barges, not subject to the penalties of this statute.

Rates of Watermen in and about *London* and *Westminster*.

	Oars.	Skull.
From <i>London-bridge</i> to <i>Lime-house</i> ,	}	s. d. d.
<i>New Crane</i> , <i>Shadwell Dock</i> , <i>Bell-</i>		1 0 6
<i>wharf</i> , <i>Rateliff Cross</i> .		
To <i>Wapping Dock</i> , <i>Wapping New</i>	}	6 3
and <i>Old Stairs</i> , the <i>Hermitage</i> ,		
<i>Rotherbith</i> .		
From <i>St. Olave's</i> to <i>Rotherbith</i>	}	6 3
<i>Church Stairs</i> .		
From <i>Billingsgate</i> and <i>St. Olave's</i>	}	6 3
to <i>St. Saviour's Mill</i> .		
		All

Watchmen.

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	Oars.	Skull.
All the stairs between London and Westminster-bridge.	6	3
From either side from London- to Lambeth and Vauxhall.	10	6
From Temple, Dorset, and Black-Friars Stairs, or Paul's Wharf, to Lambeth.	8	4
From Whitaball to Lambeth and Vauxhall.	6	3
Over the water directly between Vauxhall and Lime-house.	4	2

These rates are set forth and appointed by the lord mayor of London, and aldermen, by virtue of the statute.

Watchmen.

WATCHMEN are of three kinds, *Watch by the statute of Winton.*
viz. Those which are appointed by the statute of *Winton*, 13 Ed. stat. 2. c. 4. which is, that from *Ascension-day* till *Michaelmas*, watches shall be kept in all towns from sun setting to sun rising; in every city 6 men at every gate, in every borough 12 men, in every town 6 or 4, according to the number of the inhabitants; this watch is to be set by the constable, and the neglect thereof punishable by the *stat. 5 H. 4. c. 3.* their power is to arrest such as pass by until morning, and if no suspicion, then to be delivered; and if they are suspected, they shall be delivered to the sheriff, *viz.* to the common gaol, there

there to remain until they be in due manner delivered; and if they will not obey the arrest, hue and cry shall be levied upon them; but this watch extends only between *Ascension-day* and *Michaelmas*.

Watch kept
by the constable,
ex officio.

There is another watch which may be kept by the constable *ex officio*, which may extend to other times, because there are other things under his charge as a conservator of the peace, as for the purpose to raise and pursue hue and cry upon robberies committed, by the statute of *Winton*. 13 Ed. 1. c. 1. to search for lodgers that are suspicious persons; which is to be done every week, or at least once in 15 days, by the same *stat.* c. 4. for night walkers and persons suspicious either by night or day, by the *stat.* 5 Ed. c. 14. And though the constable is not bound to any precise time for this kind of watch, nor punishable, if he omit it, barely for the omission, if he be ready upon occasion to do his office when required in these cases; yet it is in his power to hold such watches as often as he pleases; and herein the watchmen are the ministers and assistants of the constable, and are under the same protection with him, and may act as he doth; and regularly he ought to be in company with them in their walk and watch.

Watch by
authority of
the justices.

There is also a kind of watch by authority of the justices of peace, which may be held at other times than the statute of *Winton* appoints, and the watch thus appointed hath the same power as either of the former; and this seems to be within the power of one justice

tice of the peace by the first *assignavimus* of his commission; *vide Lamb. Just. lib. 1. c. 20. fo. 185. Dalt. c. 60. fo. 142. Sc. 139. fo. 292.* but the safer and more usual way is by order of the sessions of the peace, or of the court of King's Bench.

A watchman is an assistant to the constable, when the constable is present or in the watch; for so every man assisting the constable in the execution of his office hath the same protection that the law gives the constable; secondly, purely as a watchman set by order of law; and the law takes notice of his authority *sub eo nomine*, and therefore killing of a watchman in the execution of his office is murder. *3 Inst. 3. 7. fo. 52. 4 Co. Rep. 41. a. 9 Co. Rep. 66. a. 68. a. b. Mackally's case.*

Watchmen have a double protection of the law.

By the *5 An. c. 31.* A watchman or any other person being slain in endeavouring to take a burglar or house breaker, on a certificate thereof under the hands and seals of two justices, his executors or administrators will be intitled to 40*l.*

Watchman being slain in duty, his executor intitled to 40*l.*

And the watching and warding ought to be by men able of body, and sufficiently weaponed. *Dalt. c. 104.*

If a watchman take any person for suspicion of felony, he may inquire of his good name and fame, and if he finds him to be of good name and fame, he may let him go, without being guilty of an escape. *Dalt. c. 159.*

Persons taken by watchmen.

And if any person will not obey the arrest of the watchmen, they may levy hue and cry

cry

cry upon him, that he may be taken, or they may be justified in beating him, for he resisteth the peace and the justice of the realm, and may also set him in the stocks for the same until the morning. *Dalt. c. 104.*

Vagrants.

THIS title consists almost wholly of the the statute of 17 G. 2. c. 5. commonly called the vagrant act.

An infant under the age of 7 years, shall not be deemed a rogue and a vagabond; but shall be removed to its place of settlement, as other poor persons not vagrants. *Black, 276.*

In the 17 G. 2. c. 5. Minstrels are deemed vagrants, but this shall not prejudice the heirs or assigns of *John Dutton of Dutton*, late of the county of *Chester*, esq; their heirs or assigns, concerning the privilege, or inheritance, which they, their heirs or assigns now lawfully use, or may use within the county of *Chester*, by reason of any ancient charters of any kings of this land, or by reason of any prescription, or lawful usage, or title whatsoever.

But for the understanding of this clause, we must go back to the reign of king *Richard the first*: *Randal Blundeville*, earl of *Chester*, towards the end of that king's reign, being suddenly besieged by the *Welch* in the castle
of

of *Rubelent* in *Flintshire*, send to his constable of *Flintshire*, one *Roger Lacy* (who for his fierceness was surnamed *Hell*), to hasten with what force he could to his relief. It happened to be on *Midsummer-day*, and a great fair was then held at *Chester*. Whereupon *Roger* immediately got together a great lawless mob of fiddlers, players, cobblers, and such like, and marched towards the earl; and the *Welch* perceiving a multitude approaching, raised the siege and fled. The earl being freed by this means comes back with his constable to *Chester*; and in memory of his service, by a charter grants to *Roger Lacy* and his heirs, power over all the fiddlers, letchers, whores, and cobblers in *Chester*.

About the later end of the reign of *John*, or the beginning of *Henry the second*, *Roger Lacy* being dead, his son *John Lacy*, by deed, granted to one *Hugh Dutton* his steward, and to his heirs, the rule and authority over all the letchers and whores in the county, in these words; *ſciant preſentes & futuri, quod ego Johannes conſtabularius Caſtricie, dedi & conceſſi, & hac preſenti carta mea confirmavi, Hugoni de Dutton & heredibus ſuis, magiſtratum omnium leuatorum & meretricum totius Caſterſhirie, ſicut liberius illum magiſtratum tendo de comite. Salvo jure meo mihi & heredibus meis.*

Under which grant, by ancient custom, the heirs of *Dutton* to this day claim and exercise a privilege and authority over all the common fiddlers and minstrels in *Chester*, and all *Cheſhire*; and in memory thereof, keep a yearly

yearly court at *Chester* on *Midsummer-day*, being *Chester fair*, and in a solemn manner ride attended through the city to *St. John Baptist's-church*, with all the fiddlers of the county playing before the lord of *Dutton*, and then at the court renew their licences yearly; and none ought to use the trade or employment of a minstrel or fiddler, either within the city or county, but by an order and licence of that court. 1 *Dudg. Monast.* 860.

Particular
offences and
their punish-
ments.

By the statute of 17 G. 2. c. 5. It is enacted, That whereas the number of rogues, vagabonds, beggars, and other disorderly persons, daily increases, to the great scandal, loss, and annoyance of the kingdom; be it enacted, &c. That all persons who threaten to run away and leave their wives and children to the parish; and all persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices of the peace, without bringing a certificate from the parish or place whereunto they belong, and also all persons who, not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages given to other labourers in like work, in the parishes or places where they are; and also all persons going about from door to door, or placing themselves in streets, highways or passages, to beg or gather alms in the parishes or places where they dwell, shall be deemed idle and disorderly persons; and it shall and may be lawful for any justice of the peace to commit such offenders (being thereof

con-

Vagrants.

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convicted before him or by his own view, or by their own confession, or by the oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding one month; and it shall and may be lawful for any person to apprehend and carry before a justice of the peace, any such persons going about from door to door, or placing themselves in streets, highways, or passages to beg or gather alms in the parishes or places where they dwell; and if they shall resist or escape from the person apprehending them, they shall be subject to the same punishment as rogues and vagabonds are made liable to by this act; and it shall and may be lawful for the said justice, by warrant under his hand and seal, to order any overseer of the poor of the parish or place where such offender shall be apprehended, to pay the sum of 5 shillings, to any person or persons in any such parish or place so apprehending them for every such offender so apprehended; which sum shall be allowed to such overseer in his account, he producing the justice's order, and a receipt under the hand of the person or persons to whom such was paid; but if such overseer neglect or refuse to pay the said sum, the said justice, on oath thereof made, may by warrant under his hand and seal, order the same to be levied by distress and sale of goods of such overseer; and the overplus (if any) after the charges of such distress satisfied, shall be returned to such overseer, who in such cases shall not be allowed the sum so levied in his account.

Five shillings reward for apprehending offenders.

Also

Other offences and their punishments.

Also all persons going about as patent-gatherers or gatherers of alms, under pretence of loss by fire or other casualty; or going about as collectors for prisons, goals, or hospitals; all fencers and bearwards; all common players of interludes; and all persons who shall for hire, gain, or reward, act, represent, or perform, or cause to be acted, represented or performed, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part or parts therein, not being authorized by law; all minstrels; juglers; all persons pretending to be gypsies, or wandering in the habit and form of Egyptians, or pretending to have skill in physiognomy, palmistry, or the like crafty science, or pretending to tell fortunes, or use any subtil craft to deceive and impose on any of his Majesty's subjects, playing or betting at any unlawful games or plays; and all persons who run away and leave their wives and children, whereby they become chargeable to any parish or place; and all petty chapmen and pedlars wandering abroad, not duly licensed or otherwise authorized by law; and all persons wandering abroad and lodging in ale-houses, barns, or out-houses, or in the open air, not giving a good account of themselves; and all persons wandering abroad and begging, pretending to be soldiers, marines, sea-faring men, or pretending to go to work in harvest; and all other persons wandering abroad and begging, shall be deemed rogues and vagabonds within the true intent and meaning of this act.

Pro-

Vagrants.

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Provided always that this act, or any thing herein contained, shall not extend or be construed to extend to soldiers wanting subsistence, having lawful certificates from their officers, or the secretary at war, or to mariners or sea-fairing men, licensed by some testimonial or writing under the hand and seal of some justice of the peace, setting down the time and place of their landing, or discharge, and the place to which such soldiers and mariners are to pass, and the names of the chief towns or places through which they are to pass, and limiting the time of such their passage while they continue in the direct way to the place to which they are to pass, and during the time so limited; or to any person or persons going abroad to work at any lawful work in the time of harvest, so as he, she, or they carry with him, her, or them, a certificate in writing, signed by the minister and one of the churchwardens, or chapel wardens, or one of the overseers of the poor for the time being, of the parish, chapelry, or place where they shall respectively inhabit, declaring that he, she, or they hath or have a dwelling house or place therein, which he, she or they inhabit.

Act not to extend to soldiers, &c.

And all end-gatherers offending against 13 G. 1. cap. 23. and all persons apprehended as rogues and vagabonds, and escaped from the persons apprehending them, or refusing to go before a justice or justices of the peace, or to be examined upon oath before such justice or justices, or refusing to be conveyed by any such pass as is herein after directed, or know-

Incorrigible rogues.

knowingly giving a false account of themselves on such examination, after warning given to them of their punishment; and all rogues and vagabonds who break or escape out of any house of correction before the expiration of the term for which they were committed, or ordered to be confined by virtue of this act, and all persons who after being punished as rogues and vagabonds, and discharged, shall again commit any of the said offences, shall be deemed incorrigible rogues within the true intent and meaning of this act. *SECT. 4.*

Any person
may apprehend any
offender.

If any person shall be found offending against this act, it shall and may be lawful for any person whatsoever to apprehend the person so offending, and to convey or cause to be conveyed to some justice of peace the persons so apprehended, to be proceeded against in such manner as is herein directed; and in case any such constable or other such officer shall neglect to do it, he shall be punished in such a manner as is herein after directed; and in such case any other person being charged by any justice of the peace so to do, shall refuse or neglect to use his best endeavours to apprehend and deliver to the constable or such other officer, or to carry such offender before some justice of the peace where no constable or other such officer can be found; such person so offending as aforesaid, being thereof convicted upon view or upon the oath of one or more credible witness or witnesses before one or more justice or justices of the peace, shall forfeit the sum 10 shillings, to the use

use of the poor of the parish or place where such offence shall be committed, to be levied by distress and sale of the offender's goods, by warrant from any justice or justices, and the overplus (if any) after the charges of such distress satisfied, shall be returned to such offender; and in case any person, not being a constable, or such other officer, shall apprehend any such rogue or vagabond, and shall deliver him or her to a constable or other such officer, or shall convey, or cause him or her to be conveyed to some justice or justices of the peace, according to the directions of this act; or if any constable or other such officer shall so apprehend and convey such rogue or vagabond; it shall and may be lawful for such justice or justices to reward any such constable or other person, by making an order under hand and seal upon the high or chief constable to pay the sum of 10 shillings to the person so apprehending him or her, within one week after demand and producing such order, and upon his giving a receipt for the same; and the same shall be allowed or paid by the treasurer of the county, riding, division or liberty, to such high or chief constable on his passing his accounts and delivering such order and receipt, and also his own receipt for the same to such treasurer; and the said justices at the general or quarter sessions shall allow the same to such treasurer in his accounts, upon his producing and delivering up the vouchers aforesaid; and in cities, boroughs, towns corporate, and other places where there are no high or chief constables,

Reward for
taking up
vagabonds,
&c.

P

such

Nagants.

such petty constables or other officers shall pay or retain such reward as aforesaid, and be allowed what they shall so pay or retain by virtue of this act in their respective accounts, upon their producing and delivering up the like vouchers; and in case any high or chief constable, or where there is no high or chief constable, such petty constable or other officer, shall refuse or neglect to pay such reward or demand, it shall and may be lawful for such justice or justices of the peace, by warrant under their hand and seal, to levy the sum of 20s. by distress and sale of goods of such officer, and thereout to allow the person intituled thereto, the said reward of 10s. and such other recompence for his trouble, loss of time, and expences, as the said justice or justices shall think fit, and the overplus (if any) shall be returned to such officer upon demand. *Sec. 5.*

General privy searches to be made.

The justices of the peace for every county, riding, city, borough, town corporate, division or liberty, or any two of them, shall four times in the year, or oftener (if need be) meet in their respective divisions, and by their warrant command their constables or other peace officers of every hundred, parish, town and hamlet in their several divisions, who shall be assisted with sufficient men of the same places, to make a general privy search in one night throughout their several and respective limits, for the finding and apprehending of rogues and vagabonds; and every justice of the peace shall also, on receiving information that rogues and vagabonds are in any place within

Vagrants.

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within his jurisdiction, issue his warrant to the constable or other officer of such place, to search for and apprehend such rogues and vagabonds; and such rogues and vagabonds as they shall find and apprehend upon such search, they shall cause to be brought before any justice or justices of the peace of the same county, riding, city, borough, town corporate, division or liberty. *Stat. 6.*

Where any rogues or vagabonds apprehended by any constable or such other officer or person as aforesaid, or upon such search as aforesaid, shall be brought before any justice or justices of the peace, it shall and may be lawful for such justice or justices of the peace, and he or they are hereby required to inform himself or themselves, by examination upon oath of the person or persons apprehended, or of any other person, of the condition and circumstances of the person or persons so apprehended, and of the parish or place where he, she or they were last legally settled; the substance of which examination or examinations shall be put into writing, and be subscribed or signed by the person or persons so examined; and the said justice or justices shall likewise sign the name, and transmit to the general or quarter sessions of the peace to be holden for the same county, riding, city, borough, town corporate, division or liberty, there to be filed and kept on record; and such justice or justices of the peace shall and are hereby required to order all such persons so apprehended to be publickly whipt by the constable, petty constable or tythingman, or

Justices of the peace to punish vagabonds, &c. taken up at privy search.

Different
sorts of va-
gabonds,
how to be
passed.

some other person to be appointed by such constable, petty constable, or tythingman, of such parish or place where such persons were apprehended, or to order such persons to be sent to the house of correction, there to remain until the next general or quarter sessions, or for any less time, as such justice or justices shall think proper; and after such whipping or confinement, such justice or justices may and are hereby impowered, if they think convenient, by a pass under hand and seal in the manner and form hereafter directed, to cause any person to be conveyed to the place of their last legal settlement; but if it cannot be found, then to the place of their birth; or if such persons or any of them be under the age of 14 years, and have any father or mother living, then to the place of the abode of such father or mother, there to be delivered to some churchwarden, or chapelwarden or overseer of the poor of such parish, town, or place; which pass shall be in the form or to the effect following,

To the constable of _____ in the county of _____ [or to the tythingman or other officer, as the case shall be] or [if the offender is committed to the house of correction] to the governor or master thereof: And also to all constables and other officers whom it may concern, to receive and convey, and to the churchwardens, chapelwardens, or overseers of the poor of the parish, town or place [as the case shall be] of _____ in the county of _____ or either of them, to receive and obey.

Whereas

Vagrants.

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Whereas _____ was (or were) _____ Form of the
 apprehended in the parish of _____ (or
 in the town of _____ or any other place de-
 scribing it) as a rogue and a vagabond, or as
 rogues and vagabonds, viz. wandering and
 begging there (or as the case shall be) and
 upon examination of the said _____ taken
 before _____ upon oath (which examina-
 tion is hereunto annexed) it doth appear, that
 his, her, or their last legal settlement is at
 _____ in this county, (or, in the county of
 _____) or, that the said _____ was (or
 were) born in the parish of _____ in this
 county (or in the county of _____) and
 hath (or have) not since obtained any legal
 settlement; or that the said _____ is (or
 are) under the age of 14 years, and hath (or
 have) a father or mother living or abiding in
 the parish (or town of) _____ (or other
 place describing it). These are therefore to
 require you the said constable, or other officer,
 (or governor or master of the house of
 correction, as the case shall be) to convey
 the said _____ in the next direct way to the
 said parish (or town) of _____ (or other place)
 within the said county, and there to deliver
 him (her, or them) to some churchwarden,
 chapelwarden, or overseer of the poor of the
 same parish (town or place) to be there pro-
 vided for according to law (or in case the
 said parish, town, or place, to which such
 person or persons is or are to be sent, lies in
 some other county, riding, division, corpo-
 ration, or franchise, having separate, general
 or quarter sessions of the peace, then the

form shall be as followeth, viz.) To convey the said ——— to the parish (or town) of ——— that being the first parish (or town) in the next precinct through which he (she or they) is (or are) to be sent, and to deliver him (her, or them) to the constable or other officer of such first town (or parish) in such next precinct, together with this pass, and the duplicate of the examination of the said ——— taking his receipt for the same; and the said ——— is (or are) to be thence conveyed on in like manner to the said parish (or town of) ———, there to be delivered to some churchwarden, chapelwarden, or overseer of the poor of the same parish (town or place) to be there provided for according to law; and you the said churchwardens, chapelwardens, and overseers of the poor, are hereby required to receive the said person (or persons) and provide for him (her or them) as aforesaid. ——— And be it further enacted by the authority aforesaid, That such justice or justices shall make or cause to be made a duplicate of such pass and examination, and sign the same; and shall afterwards transmit the duplicate of the said pass annexed to the examination, to the next general or quarter sessions of the peace, there to be filed and kept on record; and shall annex the duplicate of the examination to the pass and send it with the same: and the said pass, examination, and duplicates thereof, shall and may be read in any court of record in *England, Wales, or the town of Berwick upon Tyne*; as evidence. *Stat. 8.*

“ Be

Be it further enacted, That where any offender against this act shall be committed as aforesaid, to the house of correction, there to remain until the next general or quarter sessions; and the justices at such sessions shall, on examination of the circumstances of the case, adjudge such person a rogue, or vagabond, or an incorrigible rogue; they may, if they think convenient, order such rogue or vagabond to be detained and kept in the said house of correction to hard labour, for any further time not exceeding 2 years, nor less than 6 months from the time of making such order of sessions; and during the time of such person's confinement, to be corrected by whipping, in such manner, and at such times and places within their jurisdictions, as according to the nature of such person's offence, they in their discretion shall think fit; and such persons may (if the justices at the said sessions shall think convenient) afterwards be sent away by such pass, *mutatis mutandis*, as aforesaid; and if such person, being a male, is above the age of 12 years, the justices at their sessions may and are hereby impowered, at any time before he is discharged from the house of correction, to send him to be employed in his Majesty's service, either by sea or land, if they shall judge proper; and in case any such incorrigible rogue, so ordered by the said general quarter sessions to be detained and kept in the said house of correction, shall before the expiration of the time for which he or she shall be so ordered to be there detained and kept, break out or

Power of
justices, over
vagabonds
and incorri-
gible rogues.

Be

P 4

make

Vagrants.

make his or her escape from the said house of correction, or shall offend again in like manner; in every such case, every such person shall be deemed and taken to be guilty of felony, and being legally convicted thereof, shall and may be transported for any time not exceeding 7 years, in the same manner, as by the laws now in being, other felons may be transported. 8th 9.

Justices to regulate the passes, by giving the officers certificates.

“To prevent unnecessary expence in the passing of rogues, vagabonds, and incorrigible rogues, be it enacted, That the justice or justices of the peace, who shall make the pass, shall at the same time, with the said pass, cause otherwise to be delivered to the constable, or other officer appointed to convey them, a note or certificate, ascertaining how they are to be conveyed, by horse, cart, or on foot, and what allowance such constable or other officer is to have for conveying them (according to the rates or allowance, appointed by the general quarter sessions of the peace, as is herein after directed), in the form or to the effect following, viz, “Whereas by a pass (reciting the substance or effect of the said pass) I (or we) do hereby order and direct the said person (or persons) to be conveyed on foot (or in a cart, or by horse, &c.) to the said town (or parish of) ——— in ——— or other place, (describing it) in the way to such parish (town or place, as the case shall be) in ——— days time; for which the said constable, &c. is to be allowed the sum of ——— and no more.”

Given under my hand (or our hands) this day, &c.

“Be

Vagrants.

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“ Be it further enacted, That the constable, or other officer, who shall receive such pass and certificate, shall, and is hereby required to convey, or cause to be conveyed, the person or persons named in such pass, in such manner, and in such time, as by the same pass shall be directed, the next direct way to the place where he, she or they are ordered to be sent; if such place be in the same county, riding, division, corporation or franchise, he shall deliver the said person or persons to the constable or such other officer of the first town, parish or place, in the next county, riding, division, corporation or franchise, in the direct way to the place to which such person or persons is or are to be conveyed, together with the said pass and duplicate of examination, taking his receipt for the same; and such constable or other officer, shall, without delay, apply to some justice of the peace in the same county, riding, division, corporation or franchise, who shall make the like certificate as before (*mutatis mutandis*) and deliver it to the said constable or other officer, who shall, and is hereby required with all speed, convey the person or persons unto the first parish, town or place in the next county, riding, division, corporation, or franchise, to another, till they come to the place to which such person or persons is or are to be conveyed; and so in like manner from one county, riding, division, corporation, or franchise, to another, till they come to the place to which such person or persons are sent; and the constable or other

The duty of constable and other officers with such pass and certificate.

officer, who shall deliver such person or persons to the churchwarden, or other person ordered to receive them by such pass, shall at the same time deliver the said pass, with the duplicate of examination, taking their receipt for the same; and if the churchwarden or other person, who shall receive any person so sent, shall think the examination to be false, he is hereby impowered to carry the person so sent, before some justice of the peace, who, if he see cause, may commit such person to the house of correction, till the next quarter sessions, and the justices there, if they see cause, may deal with such person as an incorrigible rogue; but the person so sent shall not be removed to the place to which sent, but by order of two justices, in the same manner as other poor persons are removed to the place of their settlement. *Sec.*

II.

Persons to
pay for their
own passage,
if they are
able.

And whereas it often happens that persons commit acts of vagrancy when they are in circumstances sufficient to pay for their journey home; be it therefore enacted, That it shall and may be lawful for any justice of the peace, before whom any vagrant shall be carried, to order such vagrants to be searched, and their bundles to be inspected by the constable, tythingman, churchwarden or overseer of the poor, in the presence of the said justice; and if it shall appear, that any such vagrant shall be found to have sufficient wherewithal to pay for their passage, either in the whole or in part, to the parish to which they belong, then the said justice or justices shall

shall order so much of the money to be paid, or other effects found with or upon such vagrants, to be sold and employed for and towards the expence of taking up and passing such vagrants as aforesaid, returning the overplus (if any be) after deducting the charges of such sale, to such vagrants. *Stat. 12.*

“ Be it further enacted, That the constable or other officer of any parish, within the counties of *Cumberland, Northumberland, Durham, or town of Berwick upon Tweed*, shall and they are hereby authorized and required, upon any person or persons being delivered to them by pass and examination, who shall have been apprehended within the said counties or town, or brought to them according to the direction of this act, whose place of legal settlement is in that part of *Great Britain* called *Scotland*, to deliver the said examination to the clerk of the peace for such respective county, and to convey or cause to be conveyed, such person or persons, with the said pass, into the next adjoining shire, stewarty or place in that part of the united kingdom; and to deliver him, her or them to some constable or other officer of the next parish, district, or place, within the said shire, stewarty or place, taking his receipt for him, her or them; and such officer is hereby required to receive such person or persons, and give such receipt, and to dispose of him, her or them, according to law; and in case any such vagrant, after being so sent and conveyed into that part of *Great Britain* called *England*, contrary to the true intent

Regulations
for passing
vagrants
into *Scotland*.

Vagrants.

and meaning of this act; every such person so offending, shall be deemed an incorrigible rogue, and be punished as incorrigible rogues are to be punished by this act. *Sec. 13.*

Regulations
for passing
vagrants into
Ireland, Jersey, &c.

“Whereas divers vagrants have been conveyed from county to county, in order to be sent to places in *Ireland*, the isles of *Man*, *Jersey*, *Guernsey*, or *Scilly* (their last legal settlement) but for want of authority to compel masters of ships and vessels to take them on board, in order to be carried thither at reasonable rates, they may be very chargeable to the maritime counties, towns, and places in *England* and *Wales*, where they may lie for such exportation: be it therefore enacted, That all and every master and masters of any ship and vessel or packet boat bound for *Ireland*, the isles of *Man*, *Jersey*, *Guernsey*, or *Scilly*, shall, and they, and each of them is and are hereby required, upon warrant to him or them directed under the hand and seal of a justice of the peace of the county, town or place where such ship, vessel or packet boat shall lie, to take on board the same such vagrant and vagrants as shall be named and expressed in the said warrant, and convey him, her or them to such place in *Ireland*, the isles of *Man*, *Jersey*, *Guernsey*, or *Scilly*, as such ship, vessel, or packet boat shall be bound to, or shall arrive at; and for the charges thereof such masters shall take, and the constable, or person who serves him with the said warrant shall pay him at such rate per head, as the justices of the peace at their quarter sessions shall from time to time appoint for

for every such vagrant so brought and delivered to him; and such master shall and is hereby required, on the back of the said warrant, to sign a receipt for the money so paid, and also for the vagrant or vagrants so brought and delivered; which warrant so indorsed shall then be produced to the justice of the peace who signed and sealed the same, and upon his allowance thereof, under his hand, the money so paid shall be repaid by the county, in such manner as by this act, the money to be paid for conveying vagrants from county to county is directed, and every master of such ship, vessel or packet-boat, neglecting or refusing to receive on board, or to transport such vagrant or vagrants, or to indorse and sign such receipt as aforesaid, shall forfeit five pounds for the use of the poor of the parish or place where the offence shall be committed; to be levied by distress and sale of the said ship, or any goods within the same, by warrant under the hand and seal of any justice of the peace for the same county, city or town corporate, returning the overplus (if any be) upon demand, after the said penalty and charges of levying the same are satisfied. *Sec. 14.*

“Provided always, That no master of any such packet-boat, ship or vessel shall be compelled to take on board more than one vagrant for every 20 tons burthen of any such boat, ship or vessel. *Sec. 15.*

Masters not obliged to take on board more than one vagrant for 20 tons burthen.

“And it further enacted, That the justices of the peace of any county, riding, city, borough, town corporate, division or liberty, shall

shall and may at the general or quarter sessions of the peace from time to time limit, appoint, and direct what rates and allowances per mile, or otherwise, shall be made for the passing, conveying, and maintaining of rogues, vagabonds and incorrigible rogues, to be passed or conveyed as aforesaid; and may likewise make such other orders, rules and directions, for the more regular proceeding or acting therein, within their respective limits and jurisdictions, as they, in their discretion shall think proper; which rates, allowances, orders, rules, and directions shall from time to time be observed and submitted to by all justices of the peace, constables, officers, or other persons within the same limits and jurisdictions respectively. *Sect. 16.*

“ And be it further enacted, That in case any petty constable, or other such officer of any parish or place, shall bring to any high or chief constable any such certificate as aforesaid, as shall be given him by any justice or justices of the peace for the proper county or place, ascertaining how and for what rates, or allowances, he shall be conveyed, to convey any rogues, vagabonds or incorrigible rogues as aforesaid, together with a receipt or note from any constable or other officer or person to whom the person or persons so to be conveyed was or were delivered, the said high or chief constable shall and may pay in to such petty constable or other officer, the rates or allowances ascertained in and by such certificate, and no more, taking from such petty constable or other officer such certificate, and
his

his receipt for the same; and the said high or chief constable shall be allowed the same by the treasurer of the county, riding, liberty, division, corporation, or franchise, on his passing his accounts, upon his producing and delivering up such certificate and receipt, and giving his own receipt for the same to such treasurer; and the justices at the general or quarter sessions shall allow the same to such treasurer in his account, upon his producing and delivering up the vouchers aforesaid: and in case any high or chief constable shall refuse or neglect to pay the said petty constable or other officer or person, the rates and allowances ascertained in and by such certificate and receipt, on demand, it shall and may be lawful for any justice or justices of the peace, by warrant under hand and seal to levy double the sum ascertained by such certificate, by distress and sale of the goods of such high or chief constable, and thereout to allow the said petty constable, or other officer or person, the sum ascertained in and by such certificate and receipt, and such other recompence for his trouble, loss of time and expences, as the said justice or justices shall think fit; and the overplus (if any) shall be returned to such high or chief constable upon demand; and in cities, towns corporate and other places, where there is no high or chief constable, such petty constables or other officers, shall be allowed what they shall so pay pursuant to the directions of such certificate, in their respective accounts, upon their producing and delivering up such vouchers, or

in case any governor or master of a house of correction shall deliver such certificate and receipt to any treasurer as aforesaid, such treasurer shall pay the rates therein ascertained to such governor or master of a house of correction, taking his receipt for the same, which shall be allowed to such treasurer in his accounts, on his producing and delivering up such vouchers. Stat. 17.

Penalty on counterfeiting or otherwise altering certificates, receipts, or notes.

“ And be it further enacted, That in case any such petty constable, or other officer for governor, or master of any house of correction, shall counterfeit any such certificate, receipt or note, or make, or knowingly permit to be made, any alteration in any such certificate, receipt or note, he shall forfeit the sum of 50 *l.* and in case he shall not convey, or cause to be conveyed, the persons to the place where they ought to be conveyed, or shall not deliver them to the proper person; or if any constable, or officer or person, shall refuse to receive any such persons sent to them, or to give a receipt or note as before directed; that in any of the said cases, the constable or other officer or person shall forfeit the sum of 20 *l.* which said respective forfeiture shall be levied by distress and sale of the offender's goods, by warrant or order of the justices of the peace, where such offence shall be committed, at their general or quarter-sessions, one moiety to be paid to the person or persons who shall first make information against any such offender, and the other moiety to be paid to the treasurer of the county or place, to be applied by him as
part

part of the publick stock, and the overplus (if any) after such forfeitures levied, and the charges of distress satisfied, shall be returned to such constable or other officer or person upon demand. *Stat. 18.*

“ And be it enacted, That the parish or place to which any rogue, vagabond, or incorrigible rogue, shall be conveyed by pass as aforesaid, shall take care to employ in work, or place in some work-house or alms-house, the person or persons so conveyed to them, until he, she or they shall betake themselves to some service or other employment; and in case any such person or persons shall refuse to work, or shall not betake themselves to some service or employment, the overseers of the poor of the parish or place, or the major part of them, may cause such person or persons to be carried before some justice of the peace, in order to be sent to the house of correction there to be kept to hard labour. *Stat. 19.*

Vagabonds,
&c. to be set
to work.

“ And be it further enacted, That in case any constable or other officer, or governor or master of any house of correction, shall be defective, remiss, or negligent in his duty, in the execution of this act, in any case for which no punishment is herein before particularly provided; or in case any person or persons shall disturb or hinder the execution of this act, or shall rescue any person apprehended or passing from place to place by virtue thereof, or shall be advising, aiding or assisting to his or her escape, and shall be thereof convicted upon the oath of one or more credible witness or witnesses, before one

Penalty on
constables or
officers not
doing their
duty.

and against
such persons

to be applied by justice

or more justice or justices of the peace, where such offences shall be committed (which oath the said justice or justices are hereby impowered to administer) the person or persons so offending, for every such offence shall forfeit any sum not exceeding 5*l.* nor less than 10*s.* to the use of the poor of the parish or place where such offence shall be committed; to be levied by distress and sale of the offenders goods, by warrant from such justice or justices, returning the overplus (if any be) upon demand, after the said forfeiture and charges of making and keeping the said distress shall be paid and satisfied; and if sufficient distress cannot be found, it shall and may be lawful to and for one or more justice or justices to commit the persons so offending to the house of correction, there to be kept to hard labour for any time not exceeding two months.

Stat. 22.

“And whereas persons herein before described to be rogues, vagabonds, or incorrigible rogues, are much encouraged in wandering about, by the reception they too often meet with in villages and places where they are permitted to lodge in houses, barns, or other out-houses or buildings, by means whereof, and their falling sick there, great expenses are sometimes brought upon parishes. For remedy thereof be it enacted by authority aforesaid, That if any person shall knowingly permit or suffer any such rogue, vagabond, or incorrigible rogue, to lodge or take shelter in his or her house, barn, or other out-house or buildings, and shall not apprehend and

Penalty for
sheltering
vagabonds.

carry

carry such rogue, vagabond, or incorrigible
rogue, before some justice of the peace, or
give notice to some constable, or other such
officer so to do, such person being thereof
lawfully convicted, either on confession, or
upon oath of one or more credible witness or
witnesses, before one or more of his Majesty's
justices of the peace where such offence shall
be committed, shall forfeit any sum not ex-
ceeding 40 s. nor less than 10 s. one moiety
thereof to the informer, and the other moiety
to the use of the poor of the parish or place,
where such offence shall be committed; to be
levied by distress and sale of the goods and
chattels of such offender, by warrant from
such justice or justices, returning the over-
plus (if any) upon demand, after such forfei-
ture and charge of such distress shall be sa-
tisfied; and if any charge shall be brought
upon any parish or place, by means of any
such offence, the same shall be answered to
the said parish or place by such offender and
be levied by distress and sale of his or their
goods and chattels as aforesaid; and if suffi-
cient distress cannot be found, such offender
shall be committed to the house of correction
by the justice or justices, for any time not
exceeding one month. *Sec. 23.*

And whereas persons are often found of-
fending against this act, having children with
them, whom they bring up in a dissolute
course of life, destructive to such children,
and prejudicial to the kingdom, in which a
race of disorderly persons will increase, if
such children are suffered to remain with such
offenders;

Beggars having children how to be ordered.

offenders; be it therefore enacted by the authority aforesaid, That if any such child, above the age of 7 years, shall be committed to the house of correction as aforesaid, it shall and may be lawful for the justices at the quarter sessions, if they see convenient, at any time before such child be discharged, to order such child to be placed out in such manner as they shall think fit, as a servant or apprentice to any person within their respective jurisdictions, who is willing to take such child, to serve such person till such child shall arrive at the age of 21 years, or for any less time, as to the said justices shall seem meet: and if any offender, who was found with such child as aforesaid, shall be again found with the same child (which was so placed out as aforesaid) offending against this act, such an offender shall be deemed an incorrigible rogue. *Stat. 24.*

How to order with regard to women delivered of children in the street.

“And whereas women wandering and begging are often delivered of children in parishes to which they do not belong, whereby they become chargeable to the same; be it therefore enacted, That where any such woman shall be so delivered, and become chargeable, it shall and may be lawful for the churchwardens or overseers of the poor of such parish or place to detain such woman in their custody, until they can safely convey her to some justice of the peace, who shall examine her, and commit her to the house of correction, until the next general or quarter sessions, who may (if they see convenient) order her to be publicly whipt, and detained

Vagrants.

333

~~353~~

tained in the house of correction, for any further time, not exceeding 6 months; and upon application of the churchwardens or overseers of the place, where she was so delivered, the justices at such sessions shall order the treasurer of the county or district to pay them such a sum of money as shall be adjudged a reasonable satisfaction for the charges such place has been put to on such woman's account; and if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither for want of other settlement, by a pass, by virtue of this act, but the settlement of such woman shall be deemed the settlement of such child; any law to the contrary notwithstanding. *Sec. 25.*

“ And be it further enacted by the authority aforesaid, That any persons aggrieved by any act of any justice or justices of the peace out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter sessions of the county, riding, liberty, or division, giving reasonable notice thereof, whose order thereupon shall be final. *Sec. 26.*

“ Provided always, That in all cities and towns, where, by virtue of special acts of parliaments, the charge of passing vagrants is to be defrayed in other manner than is by this act directed, or where such vagrants by virtue of special statutes, are to be apprehended and conveyed to the places whither they

they are to be sent by any person or persons, to officers, other than those named for that purpose in this act; such charge shall be borne and defrayed in such cities and towns in like manner as before the making of this act; and the person or officer liable to such service in the said cities and towns, by virtue of the said special acts of parliament, shall continue liable, as if this act had never been made; and if any person shall be delivered to a beadle within the city or liberties of the city of London, to be conveyed on, as directed by this act, the said beadle or constable shall not deliver such person in any other precinct within the said city or liberties, but in the next county, as directed by this act. *Stat. 27.*

“ And be it further enacted by the authority aforesaid, That where any persons offending against this act have been committed as aforesaid, to the house of correction, there to remain until the next general or quarter sessions, if, upon the examination of the persons so committed as aforesaid, no place can be found to which they may be sent by a pass as aforesaid, the said justices shall at the said sessions order such persons to be detained and employed in the house of correction, until they can provide for themselves, or until the justices of the peace, at their general or quarter sessions, can place them out in some lawful calling, as servants, apprentices, soldiers, mariners or otherwise, either within this realm, or his Majesty's colonies or plantations in *America*, which the said sessions are empowered to do in such manner as they shall think fit. *Stat. 18.*

“ Pro-

“ Provided always, That this act, or any thing therein contained, or any authority thereby given, shall not in any wise extend to disinherit, prejudice or hinder the heirs or assigns of *John Dutton of Dutton*, late of the county of *Chester*, Esq; deceased, their heirs or assigns, for, touching or concerning the liberty, privilege, pre-eminence or authority, jurisdiction or inheritance, which they, their heirs or assigns, now lawfully may or ought to use, within the county palatine *Chester*, and county of *Chester*, or either of them, by reason of any ancient charters of any Kings of this land, or by reason of any prescription, or lawful usage, or title whatsoever.” *Stat. 29.*

By the 17 G. 2. c. 5. Incorrigible rogues are thus described. Incorrigible rogues.

(1.) All end gatherers offending against the statute of the 13 G. 2. being convicted of such offence.

By which act the offence is this, viz. The collecting, buying, receiving, or carrying any ends of yarn, wests, thrums, short yarn, or other refuse of cloth, drugget, or other woollen goods; and the punishment of such persons is in order to prevent their committing abuses, by such practices, in the woollen manufacture.

(2.) All persons apprehended as rogues and vagabonds, and escaped from the persons apprehending them, or refusing to go before a justice, or to be examined upon oath before such justice, or refusing to be conveyed by a proper pail, or knowingly giving a false account of themselves on such examination, after warning given them of their punishment.

(3.) All

(3.) All rogues and vagabonds who shall break or escape out of any house of correction, before the expiration of the term for which they were committed.

(4.) All persons, after having been punished as rogues and vagabonds, and discharged, who shall again commit any of the said offences:—All these shall be deemed incorrigible rogues. *f. 4.*

The form
of the high
constable's
warrant.

Worcestershire. To the constable of

By virtue of a precept from his Majesty's justices of the peace for the said county, acting in and for the said division, at their special meeting for that purpose assembled, you are hereby required in his Majesty's name, commanding and taking to your assistance sufficient men, within your constablewick (who are hereby required to assist accordingly) to make a general privy search, in the night of the ——— day of ——— throughout your said constablewick, for the finding and apprehending of rogues and vagabonds: And such as you shall find upon such search, you are to carry forthwith before some of his Majesty's justices of the peace for the said county, to be dealt with according to law. Herein fail not. Given under my hand the ——— day of ——— in the year of our Lord.

H. C.

A P.

APPENDIX.

THE act passed in the 13th year of the reign of George the III. concerning turnpike-roads, being but just published, it was too late to insert it in its proper place, but, for the information of our readers, we shall insert an abstract of it here. From the last act relating to highways, we have made a copious abstract, (see page 109) as the surveyor under that act is a parish-officer, and it materially concerns him; but under the turnpike act, the surveyor can only be considered as a person employed by the trustees, and not a parish officer; therefore we shall only give the substance of that act.

Abstract of an act passed in the 13th year of the reign of King George the Third, to explain, amend, and reduce into one act of parliament, the general laws now in being, for regulating the turnpike-roads, in that part of *Great Britain* called *England*; and for other purposes.

THE trustees, or any five of them, may order weighing engines to be erected, and may receive, besides the toll, 20 s. for every hundred weight above the allowance.

Q

Toll

Toll-keepers neglecting to weigh carriages, and receive the additional tolls, forfeit 5*l.*

Any carriage, not having passed above 300 yards beyond the toll gate, shall return, if required, to be weighed: If the driver refuses to return, he shall forfeit 4*l.* on Waggon, &c. employed in husbandry excepted.

Engines erected by former acts, to be continued five years after the expiration of such acts.

If trustees neglect to have engines, &c. erected, the justices, at a quarter sessions, may direct it to be done.

Where two roads meet, one engine is to be erected at the joint expence of the two several trusts.

No composition can be taken for tolls, unless the fellies are six inches broad.

A penalty of 5*l.* must be paid for unloading goods before coming to any turnpike-gate, to avoid paying the duties.

A penalty not exceeding 5*l.* nor less than 2*s.* for turning out of the road, to avoid being weighed. If the driver is not the owner, it is not exceeding 5*s.* nor less than 1*s.*

The wheels of the carriages, liable to be weighed by this act, shall be so constructed, that no pair of such wheels shall be wider than four feet six inches, from side to side, (except the soles of the fellies are nine inches broad, which shall be so constructed as to roll a surface of sixteen inches; and the wider part of such wheels, shall not be more than five feet eight inches from inside to inside)

and the distance from the centre of the fore wheel to the centre of the hind wheel of any waggon, or four wheeled carriage, except for timber, shall not be above nine feet, under the penalty of 5*l.*

No waggon, or four wheeled carriage, not having the sole of the fellies of the wheels nine inches broad, shall be drawn with more than eight horses; no cart or two wheeled carriage, with wheels of the breadth aforesaid, with more than five horses; such horses to draw in pairs; except an odd horse, and the number does not exceed four; and no waggon, with the sole of the fellies of the wheels six inches broad, shall be drawn with more than six horses; and no cart of the same breadth, with more than four. No waggon, whose fellies are less than six inches broad, shall be drawn with more than four; and no cart whose fellies are less than six inches broad, shall be drawn with more than three. The owner of any waggon, cart, &c. offending shall forfeit 5*l.* and the driver 20*s.*

Carriages moving upon rollers of the breadth of sixteen inches, on each side, may draw with any number of horses and cattle.

Informations for offences must be laid in three days, or actions commenced within a month.

Taking off horses, or altering the distance of the wheels to avoid a toll, incurs a penalty of 5*l.*

Trustees shall allow additional horses to draw up hill, not exceeding ten for waggons with nine-inch wheels; nor seven for waggons

gons with six-inch wheels; nor five for carts with six-inch wheels; and not exceeding five for waggons less than six inches, nor four for carts less than six inches.

No penalty to be recovered for using an additional number of horses in deep snow or ice.

Horses in pairs not allowed to draw narrow-wheeled waggons, carts, &c. except carriages drawn by two horses only.

Trustees may mitigate extraordinary tolls.

Narrow-wheeled waggons, after September 29, 1776, shall pay double tolls before they shall be permitted to pass through any turnpike-gate.

Waggons, carts, &c. moving upon rollers of sixteen inches, are to pass toll-free till Michaelmas, 1774, and afterwards for one half the toll payable by other waggons, &c.

Trustees, upon due notice, may reduce or advance the tolls, by the consent of the creditors.

Tolls may be farmed to the best bidder, but if the person who farms it takes a greater or less toll than he is authorized to do, he forfeits 5*l*.—And every gate-keeper who shall take a greater or less sum forfeits 40*s*.

Statute duty, and the compositions arising from the same, shall be performed and expended in the place where it arises.

Materials for repairing the road to be contracted for by the surveyor, and if such surveyor shall have any interest in such bargain, he shall forfeit 10*l*. and be incapable of being employed as a surveyor.

A sur-

A surveyor, suffering rubbish to lie four days within ten feet of the middle of the road, shall forfeit 40 s.

If any person shall encroach, by making a hedge, ditch or fence within thirty feet of the middle of the road, he shall forfeit 40 s.

Any person who shall damage or destroy mile-stones, shall forfeit not exceeding 5 l. nor less than 10 s.

If the driver of a cart, dray, or waggon, shall ride thereon in a street or highway, not having another person to guide the same, or if the driver by negligence or wilful misbehaviour, shall hurt any person or carriage; or if the driver of an unloaded waggon, &c. shall refuse to make way for any coach, chariot, chaise, loaded waggon, or cart; he shall, in every such case forfeit not exceeding 10 s. if he is not the owner; and if he is the owner 20 s. or be sent to the house of correction for one month.

Direction posts and graduated stones are to be put up where cross roads meet, and where the floods or waters are sometimes dangerous.

Persons maliciously destroying turnpike-gates, rails, chains, &c. are deemed guilty of felony, and shall be transported.

If the offender should not be convicted, the hundred where the offence was committed shall make satisfaction.

Qualifications of a trustee are, a real estate of 40 l. a year, 800 l. personal estate, or the being heir apparent to a real estate of 80 l. a year.

No

No victualler, innkeeper, or retailer of wine, cyder, beer, ale, or strong liquors shall be a trustee.

When a gate-keeper dies, the trustees are to appoint another, and the surveyor and gate-keeper are to account upon oath.

No gate-keeper shall gain a settlement by renting the tolls; nor be assessed towards any parish rate.

Justices of the peace, in *Wales*, may at their discretion, license the increase of the number of horses, &c. employed in drawing carriages.

Trustees may agree with persons liable to repair the highways, &c.

The inhabitants liable to repair old highways, are obliged to repair new ones.

Where oxen, or neat cattle, are used in carriages, two oxen shall be considered as one horse.

After *Michaelmas*, 1776, the tire of all waggons shall be flat, and the nails sunk so as not to rise above the surface, on pain of 40s. or the driver 20s.

Every constable, headborough, or tything-man, refusing or neglecting to put this act into execution, shall forfeit 10l.

Whoever shall oppose or resist the execution of this act, shall forfeit not exceeding 10l. nor less than 40s. or be committed to prison not exceeding three months.

Penalties and forfeitures under this act to be recovered by distress and sale.

Persons aggrieved under this act may appeal to the justices, at any general quarter sessions for

for the limit wherein the cause of complaint shall arise.

After September 28, 1773, an act passed the seventh of George III. intituled, an act to explain, amend, and reduce into one act of parliament, the general laws now in being for regulating the turnpike-roads of this kingdom, and for other purposes therein mentioned (except so much as repeals the several acts therein mentioned), shall be, and the same is repealed; and this act shall commence and take effect on September 29, 1773.

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proper sized type, that five or six Numbers only will contain
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And hence the purchaser, at the trifling expence of thirty
shillings, will be enabled to become master of what is at pre-
sent sold for almost as many pounds.

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